

(Use this form to file a local law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Brookhaven

Local Law No. 4 of the year 2024

A local Law amending Chapter 85 entitled "Zoning" and Chapter SR entitled "Subdivision Regulations" of the Code of the Town of Brookhaven

Be enacted by the Town Board of the Town of Brookhaven as follows:

Section 1. Legislative Intent. It is the intent of these amendments to Chapter 85 entitled "Zoning" and Chapter SR entitled "Subdivision Regulations" to authorize the Town Board to assume the duties of the Planning Board and other associated amendments to effectuate same in order to streamline applications; adding new definitions to clarify and distinguish specific uses; increasing as of right and accessory uses; creating specific special permit criteria to address the unique impacts of certain uses and; to improve the land use application process for residents and businesses within the Town of Brookhaven.

Section 2. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-1 entitled "Definitions; word usage" is hereby amended as follows:

§ 85-1. Definitions; word usage.

A. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number; and words in the singular include the plural number. The word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is always mandatory; and the word "used" or "occupied" shall be construed as though followed by the words "or intended, arranged or designed to be used or occupied." The word "Town" shall mean the Town of Brookhaven; the term "Town Board" shall

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mean the Town Board of said Town; the term "Planning Board" shall mean the Planning Board of said Town, or whenever there is no duly constituted Planning Board of the Town, the term "Planning Board" shall mean the Town Board acting as a Planning Board, in the manner provided in this Code; the term "Board of Appeals" shall mean the Board of Appeals of said Town; the term "Chief Building Inspector" shall mean the Building Inspector of said Town; the term "Town Engineer" shall mean the Town Engineer of said Town; and the term "Town Clerk" shall mean the Town Clerk of said Town.

B. For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein:

BAR, TAVERN OR PUB

An establishment, 4,999 square feet or less, regulated by the New York State Liquor Authority and consisting of one or more of the following characteristics: age restrictions or cover charges for admission, listening or dancing to music provided by live entertainment, disc jockeys, juke boxes or hours of operation which extend beyond the normal dining times for dinner. The accessory or incidental sale of foods or snacks shall not entitle such a use to be considered a restaurant under other provisions of this code. The permanent or temporary removal of tables and chairs from such an establishment to permit any of the aforesaid characteristics shall constitute the creation of a bar, tavern or pub.

DELICATESSEN

A store which sells food products, both those ready to eat and those prepared to eat.

DOG/PET DAY CARE

A commercial establishment in which dogs or domesticated animals are housed excluding overnight boarding, groomed, bred, trained or sold, all for a fee or compensation.

MOTORIZED RECREATION

Any facility or location designed and equipped for the conduct of a recreational or competitive activity dependent on the operation of gas or electric powered motor vehicles occurring either within or outside of an enclosed structure including the operation of motorcycles, dirt bikes, go-karts, All Terrain Vehicles, passenger vehicles and trucks.

NIGHTCLUB OR DANCE HALL

(If additional space is needed, attach pages the same size as this sheet, and number each.)

An establishment, 5,000 square feet or more, regulated by the New York State Liquor Authority and consisting of one or more of the following characteristics: age restrictions or cover charges for admission, listening or dancing to music provided by live entertainment, disc jockeys, juke boxes or hours of operation which extend beyond the normal dining times for dinner. The accessory or incidental sale of foods or snacks shall not entitle such a use to be considered a restaurant under other provisions of this code. The permanent or temporary removal of tables and chairs from such an establishment to permit any of the aforesaid characteristics shall constitute the creation of a nightclub.

OUTDOOR RECREATION

Any facility or location designed and equipped for the conduct of sports and non-motorized recreational activities not occurring within a structure or building including, but not limited to, athletic fields, courts, rinks, water parks, sports stadiums, pitches or ranges, or structures, obstacles and ramps intended for use with skateboards, bikes, skates, and non-motorized scooters.

RESTAURANT, TAKE OUT

Any establishment where the principal business is the commercial sale of prepared foods, frozen desserts or beverages, to patrons for immediate consumption, with a total gross floor area of 2,000 square feet or less, ~~or~~ not more than 32 seats, and without drive-through service including but not limited to delicatessens, bakeries, coffee shops, cafes and bagel stores but excluding convenience stores.

Section 3. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-5 entitled "Planning Board recommendations" is hereby amended as follows:

§ 85-5. Reserved.

Section 4. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-34 entitled "When effective; applicability; severability." is hereby amended as follows:

§ 85-34. When effective; applicability; severability.

A. This article shall become effective upon filing with the New York State Secretary of State.

B. This article shall apply to all members of the Town of Brookhaven Zoning Board of Appeals and Planning Board, regardless of the date of their appointment to such boards.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

C. Prospective members of the Zoning Board of Appeals and Planning Board shall be notified of the requirements of this article prior to their appointment to such board.

D. General severability. If any clause, sentence, paragraph, section or item of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair nor invalidate the remainder hereof, but such adjudication shall be confined in its operation to the clause, sentence, paragraph, section or item directly involved in the controversy in which such judgment shall have been rendered.

E. Provisions for this Article governing removal of a member of the Planning Board do not apply in the event that there is no duly constituted Planning Board and the Town Board is acting in the capacity of the Planning Board.

Section 5. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-47 entitled "When effective; applicability." is hereby amended as follows:

§ 85-47. When effective; applicability.

A. This article shall become effective upon filing with the Secretary of State of the State of New York.

B. This article shall apply to all members of the Town of Brookhaven Zoning Board of Appeals and Planning Board, regardless of the date of their appointment to such boards.

C. Prospective members of the Board of Zoning Appeals and Planning Board shall be notified of the requirements of this article prior to their appointment to such board.

D. General severability. If any clause, sentence, paragraph, section or item of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair nor invalidate the remainder hereof, but such adjudication shall be confined in its operation to the clause, sentence, paragraph, section or item directly involved in the controversy in which such judgment shall have been rendered.

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E. Provisions for this Article governing removal of a member of the Planning Board do not apply in the event that there is no duly constituted Planning Board and the Town Board is acting in the capacity of the Planning Board.

Section 6. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-68 entitled "Review and Issuance" is hereby amended as follows:

§ 85-68. Review and Issuance.

The Town Board shall have the following powers and duties:

A. To hear and authorize, in specific cases, such special permits. An application requesting a special use permit shall be addressed to the Town Board, in accordance with the requirements set forth in this chapter.

B. To review special permits for any of the uses for which this chapter requires the obtaining of such permits from the Town Board. In granting such permits, the Town Board may waive or modify any of the criteria listed herein or within the specific zoning districts and/or it may limit the duration of the special use permits and prescribe appropriate conditions and safeguards in conformity with this chapter.

(4) Expiration. All special permits granted by the Town Board pursuant to this chapter shall expire three years after the date of the Town Board's grant of approval thereof, unless a building permit has been issued and substantial construction has commenced in reliance thereon. The Town Board may grant a maximum of three extensions, not to exceed one year each. Upon written request by the applicant/owner, or representative thereof, received by the Town Clerk, in writing, with the required application fee as established by Town Board Resolution, prior to the expiration date of the permits. For purposes of this subsection, the date of the grant of approval is defined as the date set by the Town Clerk for the special permit to become effective, thereby causing the special permit to be in full force and effect.

Section 7. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-81 entitled "Application requirements" is hereby amended as follows:

§ 85-81. Application requirements.

A. An application in the form approved by the Town Board, requesting a change of zone classification or special permits (hereafter referred to as "the application") shall be addressed to the Town Board, in addition to the following information, and subject to any other requirements as deemed necessary by to the Board, which shall be submitted with the application and shall be filed with the Town Clerk:

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- (1) An original complete and fully executed application.
- (2) A metes and bounds description of the boundaries of the property affected by the application; and the district, section, block and lot numbers for the subject property. In the event that the applicant/owner has an interest in any contiguous property, the metes and bounds description of such property; the district, section, block and lot numbers for the contiguous property, as well as the acreage of any contiguous property owned by the applicant/owner.
- (3) A conceptual plan signed and sealed by a professional licensed in the State of New York that includes: a metes and bounds description of the boundaries of the property affected by the application; the approximate quantity, nature and location of proposed land uses; conformance with Town Code development standards; the proposed principal means of access to the site and major elements of the on-site circulation system; water supply and wastewater disposal; and such other information as would assist the reviewer at this conceptual review stage. A site plan may be submitted in lieu of a conceptual plan; however, said site plan must include all the information required in the conceptual plan.
- (4) A four-inch-by-four-inch diagram to be approved by the Department of Planning, Environment and Land Management, prepared by a registered professional engineer or registered land surveyor, indicating the location of the property which is the subject of the application with respect to the nearest intersecting street. The total acreage of the site shall be indicated on said diagram, as well as the district, section, block and lot numbers of the property. The following information is to be contained within the four-inch-by-four-inch diagram: hamlet name, the school district name and number, the application name, the existing zoning and the requested change of zone classification, special permit(s) and/or special permit waivers. If special permit waivers are sought, the diagram must state, "...and special permit waivers." The specific list of the waivers sought need not be included in the diagram.
- (5) A Town of Brookhaven Zoning Map in which the property which is the subject of the application is located. Such maps shall show the outline of the property which is the subject of the application.
- (6) A completed original Town of Brookhaven long environmental assessment form.
- (7) A title certification (which includes ownership verification and deed restrictions) prepared by a title company licensed to do business in the State of New York covering the subject premises and all contiguous property owned by the applicant/owner, or which the applicant/owner has an interest in, dated within three months of the date of the filing of the application documents. The title search must also contain a recorded copy of all deed restrictions referred therein. If no deed restrictions exist, the title certification must clearly so state. The title certification must also

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certify to the Town of Brookhaven that a 20-year search was conducted within the Office of the Suffolk County Clerk.

(8) A copy of the two notices to be sent to property owners as required under § 85-85 of this article.

(9) All return receipt cards, except that such return receipt cards may be filed within 45 days after the filing of the application. (See § 85-85.)

(10) An original sworn statement from the petitioner or his representative stating that notices have been sent by either certified or registered mail to adjacent property owners as required by this section. Said statement must contain the application name as set forth in the land use application, and shall be filed with the Town Clerk's office within 10 days of mailing the notices required herein.

(11) The filing fee.

(12) All certificates of occupancy, certificates of compliance, certificates of existing use and/or certificates of zoning compliance for all existing structures for all properties, which are subject to the application.

(13) A recorded copy of the deed for all properties which are subject to the application.

(14) The Town Assessor certified radius map, containing the names and addresses of the owners located within 500 feet of the perimeter of the properties, which are subject to the application, including the perimeter of all contiguous properties owned by the applicant/owner, or which the applicant/owner has an interest in to whom notices are to be sent.

B. An application, in the form approved by the Town Board, requesting an amendment of restrictive covenant (hereafter referred to as "the application"), shall be addressed to the Town Board, in addition to the following information, and any other requirements as determined by the Town Board which shall be submitted with the application, shall be filed with the Town Clerk:

(1) A complete original fully executed application.

(2) A metes and bounds description of the boundaries of the property affected by the application; and the district, section, block and lot numbers for the subject property. In the event that the applicant/owner has an interest in any contiguous property, the metes and bounds description of such property; the district, section, block and lot numbers for the contiguous property, as well as the acreage of any contiguous property owned by the applicant/owner.

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(3) A survey, prepared by a registered professional engineer or a registered land surveyor, giving an exact description and location of the property with all existing and proposed structures and setbacks from all property lines. The survey must be signed and sealed by the engineer or land surveyor.

(4) The Town Assessor certified radius map containing the names and addresses of the owners located within 500 feet of the perimeter of the properties, which is subject to the application, including the perimeter of all contiguous properties owned by the applicant/owner, or which the applicant/owner has an interest in to whom notices are to be sent.

(5) A Town of Brookhaven Zoning Map in which the property which is the subject of the application is located. Such maps shall show the outline of the property which is the subject of the application.

(6) A four-inch-by-four-inch diagram to be approved by the Department of Planning, Environment and Land Management, prepared by a registered professional engineer or registered land surveyor, indicating the location of the property which is the subject of the application with respect to the nearest intersecting street. The total acreage of the site shall be indicated on said diagram, as well as the district, section, block and lot numbers of the property. The following information is to be contained within the four-inch-by-four-inch diagram: hamlet name, the school district name and number, the application name, the existing zoning and the request for amendment of restrictive covenant.

(7) A copy of the two notices to be sent to property owners as required under § 85-85.

(8) All return receipt cards, except that such return receipt cards may be filed within 45 days after the filing of the application. (See § 85-85.)

(9) An original sworn statement from the petitioner or his representative stating that notices have been sent by either certified or registered mail to adjacent property owners as required by this section. Said statement must contain the application name as set forth in the land use application, and shall be filed with the Town Clerk's office within 10 days of mailing the notices required herein.

(10) A completed original Town of Brookhaven long environmental assessment form.

(11) A title certification (which includes ownership verification and deed restrictions (i.e., covenants and restrictions and/or easements), prepared by a title company licensed to do business in the State of New York covering the subject premises and all contiguous property owned by the applicant/owner, or which the applicant/owner has an interest in, dated within three months of the date of the filing of the application documents. The title search must also contain a recorded

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copy of all deed restrictions referred therein. If no deed restrictions exist, the title certification must so state. The title certification must also certify to the Town of Brookhaven that a 20-year search was conducted within the Office of the Suffolk Clerk.

(12) The filing fee.

(13) All certificates of occupancy, certificates of compliance, certificates of existing use and/or certificates of zoning compliance for all existing structures for all properties, which are subject to the application.

(14) A recorded copy of the deed for all properties which are subject to the application.

(15) A conceptual plan, signed and sealed by a professional licensed in the State of New York, which includes a metes and bounds description of the boundaries of the property affected by the application, showing the proposed development. A site plan may be submitted in lieu of a conceptual plan; however, said site plan must include all the information required in the conceptual plan.

C. No application shall be accepted or filed with respect to any property which has been the subject of a public hearing during the period 12 months immediately following such public hearing, unless such application sought to be filed shall have endorsed thereon the consent to the filing thereof of at least five members of the Town Board.

Section 8. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-82 entitled "Land use intensification mitigation fee" subsection F. is hereby amended as follows:

§ 85-82. Land use intensification mitigation fee.

F. The required land use intensification mitigation fee shall be submitted prior to the effective date of the change of zone.

Section 9. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-85 entitled "Notice Required" is hereby amended as follows:

§ 85-85. Notice Required.

A. The Town Board shall fix the time and place of a public hearing thereon and cause notice to be given in accordance with the provisions of § 264 of the Town Law. The applicant shall provide the following notice requirements: a notice containing the following information must be sent by either certified or registered mail, return receipt requested, to every property owner immediately adjacent and directly opposite thereto for a distance of 500 feet from the perimeter

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of the subject property. Additionally, such notice shall be mailed to the school district, fire and ambulance districts in which property is located and the Suffolk County Water Authority. Such notices shall be mailed within 10 days after the application has been filed with the Town Clerk and a second notice at least 10 days prior to the public hearing. Proof of such mailing shall be given to the Town Clerk at or prior to the public hearing. In the event that the applicant owns or has an interest in property contiguous to the subject property, such distance shall be measured from the perimeter of such contiguous property. For the purpose of this section, the word "owner" or "property owner" means the owner as shown on the current Brookhaven Town assessment roll. Said notice shall contain the following information:

- (1) The current zoning, relief requested (*i.e.* change of zoning classification, amendment of restrictive covenant, special permit and/or special permit waivers), including a description of the nature of the proposed request to the Town Board.
- (2) A metes and bounds description of the property which is the subject of the application.
- (3) A statement as to which side of any street in the Town of Brookhaven the property is located on and the distance and direction from the nearest intersecting street. If the property is located at the intersection of two or more streets, the notice shall state on which corner the property affected by the application is located.
- (4) A statement that a more detailed diagram of the property which is the subject of the application is on file at the office of the Town Clerk and may be examined during regular office hours and by any interested person.
- (5) A statement that all persons interested in the proposal shall be notified of the date fixed by the Town Board for a public hearing in the matter, provided that they file a written request for such notice with the Town Clerk, Town of Brookhaven, One Independence Hill, Farmingville, New York 11738.
- (6) A copy of the four-inch-by-four-inch diagram required by §§ 85-81A(4) and 85-81B(6).

B. A poster to be obtained from the Town Clerk must be conspicuously posted every 200 feet along the entire length of each street frontage of the subject property at least 10 days prior to the date set for the public hearing before the Town Board.

- (1) An affidavit of posting shall be submitted to the Town Clerk by the applicant on or before the date set for the public hearing.
- (2) Said poster must remain in place until the public hearing has been completed and must be removed no later than seven days thereafter. The applicant or applicant's agent shall verify that

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said poster is still in place on a daily basis and shall promptly replace said poster should it be removed or defaced.

(3) The Town Board may set a fee to cover the cost of said poster.

C. The notice of public hearing before the Town Board published by the Town Clerk shall contain the following:

(1) The name of the applicant.

(2) The existing zoning and the proposal before the Town Board.

(3) A statement that a public hearing on the proposal will be held at a specified time, date and place.

(4) The Suffolk County Tax Map Number of the subject property.

(5) The distance and direction of the subject property from the nearest intersecting street or, if said property is located at an intersection, the corner on which said property is located.

(6) The school district in which the subject property is located.

(7) The four-inch-by-four-inch diagram required by §§ 85-81A(4) and 85-81B(6).

(8) A statement that a more detailed diagram of the subject property is on file at the office of the Town Clerk and may be examined during regular office hours by any interested person.

(9) A statement that any interested person will be given the opportunity to be heard at the public hearing.

D. Renotification required. In the event that the public hearing is to be held more than one year after the date of submission of the application, the applicant shall submit a new list of the names and addresses of all owners of property as shown on the current Brookhaven Town assessment roll within 500 feet of the perimeter of the property and shall notify the same as described in Subsection A above.

Section 10. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-86 entitled "Town Board Determination" is hereby amended as follows:

§ 85-86. Town Board determination.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

A. Whenever the Town Board, as a condition for the granting of an application, requires a restrictive covenant to be imposed upon the subject property, the following shall be filed with the Town Clerk:

- (1) An original signed and notarized declaration of covenants.
- (2) A certified survey prepared by a registered land surveyor showing by courses and distances the subject property which is the subject of the restrictive covenant. Said survey shall be dated within one year of the date of submission.
- (3) A metes and bounds description of the boundaries of the property affected by the restrictive covenants and the district, section, block and lot numbers for the property.
- (4) Deed and a title certification prepared by a title company licensed to do business in the State of New York covering the subject premises and all contiguous property. Said title certification shall include ownership verification, mortgage(s), judgment(s) and lien(s) and be dated within six (6) months of the date of submission. If no judgment(s)/lien(s) exist, the title certification must so state. The title certification must also certify to the Town of Brookhaven that a 20-year search was conducted within the Office of the Suffolk County Clerk. If the certification is prepared by an abstract/agency company, a letter from the title company authorizing the agency/abstract company to issue the title certification on its behalf is required.

B. Publication of approval. Whenever the Town Board grants an application for a change of zone or covenant amendment, and after all conditions of such Town Board approval have been met, the Town Clerk shall publish a notice of adoption of the application and shall set the date for the application to become effective, thereby causing the application to be in full force and effect.

C. Inactivity.

(1) Failure to meet all conditions of the Town Board resolution of adoption within two years from the date the applicant/owner was notified of the approval by the Town Clerk will cause the application to be deemed inactive, except as follows:

(a) The Town Board may grant extensions of time to meet conditions, upon written request from the applicant/owner to the Town Clerk. The Town Board may grant a maximum of two extensions, not to exceed one year each. Said request must sufficiently demonstrate that:

[1] The applicant is diligently pursuing all other required governmental permits or other approvals; and

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[2] The extension request is received in writing, with the required application fee as established by Town Board Resolution, by the Town Clerk prior to the expiration of the approval.

(2) At the expiration of such time period prescribed in § 85-86C(1), and any extensions thereof, the Town Board may rescind any resolution of adoption after a duly noticed Town Board public hearing, which hearing shall be subject to the requirements of § 85-87.

(3) Prior to a Town Board hearing to rescind the resolution of adoption, the Town Board may grant a request to reinstate the application upon written request from the applicant/owner, subject to the submission of a reinstatement filing fee, and subject to the requirements set forth in § 85-86C(1)(a).

(a) Subsequent failure to meet all conditions of Town Board approval within two years from the date the applicant/owner was notified of the application reinstatement by the Town Clerk, will cause the application to be deemed inactive, and no further extensions shall be permitted pursuant to § 85-86C(1)(a).

D. Withdrawal of Town Board Application

(1) An application for which the Town Board has not yet taken any action shall be deemed withdrawn in the following circumstances:

(a) The applicant has failed to submit documents to the Town Clerk within six (6) months of the date of a written request by the Department of Planning, Environmental and Land Management, the Office of the Town Attorney, or the Office of the Town Clerk. The documentation submitted to avoid withdrawal under this provision must evidence the applicant's action in response to requirements issued by the Department of Planning, Environmental and Land Management, the Office of the Town Attorney, or the Office of the Town Clerk, to the satisfaction of the reviewing department.

(b) Upon written request of the applicant.

(2) Inactive Town Board Land Use Applications.

(a) Land Use Applications submitted to the Town Clerk that remain incomplete, and/or for which the applicant initiates no activity for a period in excess of one (1) year, may be deemed withdrawn, so long as written notice is provided to the applicant informing said applicant of the Town Clerk's intent to deem the application withdrawn at least thirty (30) days prior to the Town Clerk's determination. If an application is inactive for more than two (2) years, it shall be deemed withdrawn without further notice.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Section 11. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-99 entitled "Membership; terms of office." is hereby amended as follows:

§ 85-99. Membership; terms of office.

A. Legislative intent. The Town Board wishes to increase the Planning Board membership to seven members and appoint each member for a three-year term. It is the intent of this article, pursuant to the Municipal Home Rule Law, that the Town Board supersede Town Law § 271 to establish terms of office which are inconsistent with Town Law § 271.

B. Authority of Chairperson.

(1) The principal executive officer and administrative head of such Planning Board shall be the Chairperson, who shall be appointed by the Town Board for such term and at such compensation as may from time to time be fixed by the Town Board.

(2) The Town Board may appoint a Deputy Chairperson at such compensation and for such term as may from time to time be fixed by the Town Board, who shall generally act in behalf of the Chairperson and who shall perform such duties as may be directed by the Chairperson and as are vested in and imposed by the provisions of this chapter, by statute or by other lawful authority.

(3) Before entering upon the duties of his office, the Chairperson shall execute and file with the Town Clerk an official undertaking, if the same is required by the Town Board, in such sum as prescribed by the Town Board and in such form as approved by the Town Attorney.

(4) The Chairperson shall have such powers as prescribed by law as shall be necessary for the proper administration of the Planning Board consistent with applicable provisions of law.

C. Any person appointed as a member of the Planning Board shall serve for a term of three years, at such compensation as may from time to time be fixed by the Town Board. After the expiration of the terms of the members serving on the Planning Board, any member reappointed, or any successor in office, shall serve for a term of three years. If a vacancy shall occur other than by expiration of term, it shall be filled by the Town Board, by appointment, for the unexpired term; however, no such appointment shall exceed three years. Any new appointment, reappointment or appointment to a vacancy shall not exceed three years.

D. Of the seven members so appointed, at least one will be a licensed architect, and additionally at least two members will be either a licensed architect, a licensed engineer, a licensed attorney, an environmentalist or a certified planner. Additionally, four positions will be appointed as community members at large. Said composition to be phased in with any reappointment and/or new appointment effectuated on or after the effective date of this article. Nothing herein contained will invalidate decisions of this Board during this phase-in period.

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E. Performance of functions by Town Board.

Whenever there is no duly constituted Town Planning Board existing in the Town of Brookhaven, all functions of a planning board as governed by New York State law and the Code of the Town of Brookhaven shall be performed by the Town Board. The provisions of this Section II shall supersede any inconsistent provisions of any other section of this Chapter.

F. Referrals to Town Board.

All other officers, boards, agencies and commissions shall make referrals to the Town Board, acting as a Planning Board, in the manner provided in this Code or any rule or regulation before taking official action, in case there is no duly constituted Town Planning Board.

G. The Town Supervisor shall serve in the capacity of Chairperson of the Planning Board and the Deputy Supervisor shall serve in the capacity of Deputy Chairperson of the Planning Board in case there is no duly constituted Town Planning Board and the Town Board is acting as a Planning Board.

H. General severability. If any clause, sentence, paragraph, section or item of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair nor invalidate the remainder hereof, but such adjudication shall be confined in its operation to the clause, sentence, paragraph, section or item directly involved in the controversy in which such judgment shall have been rendered.

Section 12. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-100 entitled "Reserved." is hereby amended as follows:

§ 85-100. Dissolution

The Town Board of the Town of Brookhaven hereby dissolves the Planning Board pursuant to the authority of Town Law § 271 and all functions of a planning board as governed by New York State law and the Code of the Town of Brookhaven shall be performed by the Town Board.

Section 13. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-107 entitled "Special permits from Planning Board" is hereby amended as follows:

§ 85-107. Special permits from Planning Board.

A. As provided by this chapter, special permits from the Planning Board shall be granted only where said Board shall determine:

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(1) That the use will not prevent the orderly and reasonable use of adjacent proportion or of properties in the surrounding area or impair the value thereof.

(2) That the use will not prevent the orderly and reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located or of permitted or legally established uses in adjacent districts.

(3) That the safety, health, welfare, comfort, convenience or order of the Town will not be adversely affected by the proposed use and its location.

(4) That the use will be in harmony with and promote the general purposes and intent of this chapter.

B. In making such determination, the Planning Board shall give consideration, among other things, to:

(1) The character of the existing and probable development of uses in the district and the peculiar suitability of such district for the location of any of such permissive uses.

(2) The conservation of property values and the encouragement of the most appropriate uses of land.

(3) The effect that the location of the proposed use may have upon the creation or undue increase of traffic congestion on public streets, highways or waterways.

(4) The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent, whether liquid, solid, gaseous or otherwise, that may be caused or created by or as a result of the use.

(5) Whether the use or materials incidental thereto or produced thereby may give off obnoxious gases, odors, smoke or soot.

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(6) Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise.

(7) Whether the operation in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing or if proposed by the Town or other competent governmental agency.

(8) The necessity for an asphaltic or concrete surfaced area for purposes of off-street parking and loading of vehicles incidental to the use and whether such area is reasonably adequate and appropriate and can be furnished by the owner of the plot sought to be used within or adjacent to the plot wherein the use shall be held.

(9) Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use or by the structures to be used therefor or by the inaccessibility of the plot or structures thereon for the convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot.

(10) Whether the use or the structures to be used therefor all cause an overcrowding of land or undue concentration of population.

(11) Whether the plot area is sufficient, appropriate and adequate for the use and the reasonable anticipated operation and expansion thereof.

(12) The physical characteristics and topography of the land.

(13) Whether the use to be operated is unreasonably near to a church, school, theater, recreational area or place of public assembly.

C. Expiration. All special permits granted by the Planning Board pursuant to this chapter shall expire three years after the date of the Planning Board's grant of approval thereof unless a building permit has been issued and substantial construction has commenced in reliance thereon. The Planning Board may grant a maximum of three extensions, not to exceed one year each, of

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the grant of approval where a building permit has been issued and substantial construction, with sufficient proof of such substantial construction, having commenced in reliance thereon.

D. In granting such permits, the Planning Board may waive or modify any of the criteria listed herein or within the specific zoning districts and/or it may limit the duration of the special use permits and prescribe appropriate conditions and safeguards in conformity with this chapter.

Section 14. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-113 entitled "Site plan review and approval." is hereby amended as follows:

§ 85-113. Site plan review and approval.

A. Site plan review and approval is required in all zoning districts for all buildings and structures or land use and/or for all alterations or changes in use thereto, except for the following: single-family dwellings; subdivision maps or plats, including residential land divisions, notwithstanding any provision to the contrary in this chapter; permitted agricultural uses other than horse farms, and customary accessory uses thereto; and the exceptions set forth in § 85-116. Notwithstanding the aforementioned requirements, the Town Board may, upon proper application therefor, grant a waiver from the within site plan review and approval requirements for properties located within the Fire Island National Seashore (a/k/a Great South Beach at Fire Island National Seashore).

B. In each case where a site plan is required, the applicant shall submit a site plan, prepared by a registered New York State landscape architect, land surveyor, architect or engineer, to the Planning Board prior to the filing of the application for a building permit with the Chief Building Inspector. Elevations, showing front, side and rear architectural features of the proposed structures, shall be submitted with the site plan and shall be considered a part thereof. The applicant shall demonstrate that the architectural and aesthetic features of the proposed structure will conform to and enhance the architectural features of the neighborhood. In appropriate cases, the Planning Board and/or the Commissioner of Planning, Environment and Land Management may require a landscape plan prepared by a registered New York State landscape architect.

C. The Planning Board is hereby authorized to review and approve, approve with modifications or disapprove said site plan in accordance with all applicable standards contained herein or within the Subdivision Regulations and to adopt such rules as it deems necessary to exercise the powers herein granted.^[1]

(1) Requirement of stormwater pollution prevention plan (SWPPP). A stormwater pollution prevention plan (SWPPP) consistent with the requirements of Chapter 86, Stormwater Management and Erosion Control, shall be required for site plan approval. The approved SWPPP shall meet the performance and design criteria and standards and be consistent with the

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provisions as set forth in Chapter 86, Stormwater Management and Erosion Control, of the Town Code.

D. The Chairman of the Planning Board may require a public hearing in conjunction with site plan review for development in any zoning district upon making a determination that construction on or the use of the subject site may have a significant impact on the surrounding community.

E. The Planning Board shall consider the following elements in its review process: ingress to and egress from all public highways to the premises, subject to the approval of the appropriate municipal agencies having jurisdiction of such highways, the traffic pattern within the premises, the location and placement of parking spaces, parking areas, loading areas and spaces, curbs, sidewalks and access driveways as may be required under this chapter, or by any municipal agency, all drainage facilities, grading, lights, the placement of signs on the premises, the location and dimensions of all existing and proposed structures upon the site, open spaces, landscaping, screening, architectural features, all other physical features and improvements, the impact of the proposed use on adjacent land and land uses and such other elements as may be reasonably related to the health, safety and general welfare of the community.

F. (Reserved)

G. There shall be submitted with the application for site plan approval a copy of any restrictive covenant running in favor of the Town, or, if there is no such restrictive covenant, the applicant shall furnish an affidavit to that effect.

H. In any case where the site plan submitted by the applicant indicates that a variance and/or special permit is needed in order to construct or use the premises as shown on said site plan, the applicant shall submit an application for said variance and/or special permit to the appropriate board upon the filing of the application for approval of the site plan with the Planning Board. Upon adoption by said board of a resolution with respect to the application for a variance and/or special permit, the applicant shall submit to the Planning Board the date and case number of said resolution as well as the decision rendered by the issuing board. If the variance and/or special permit is granted, said variance and/or special permit shall be deemed to be incorporated in the site plan submitted by the applicant. In those cases where a variance and/or a special permit is required, there shall be no final approval of the site plan by the Planning Board until such variance and/or special permit has been granted by the appropriate board. Upon issuance, said variance/special permit shall be deemed incorporated within the site plan, and shall remain valid for the duration of the site plan or any authorized extension thereof for all site plans approved on or after the effective date herein.

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I. If no public hearing is held, the Planning Board shall render its decision with respect to site plan approval within 62 days after receipt of the application unless an extension has been agreed upon.

J. In all cases, the Planning Board shall notify the applicant of the decision rendered and shall set forth its reasons for the action taken.

K. Final site plan approval and all other permits, approvals and authorizations as may be required from other municipal and governmental agencies and departments shall be obtained prior to the issuance of a building permit(s).

L. Any property developed or used pursuant to an approved site plan shall be developed, maintained, and used in conformity with the provisions of said site plan. Any variations from or amendments to an approved site plan must be reviewed and approved by the Planning Board. No site work, including the removal of trees or other vegetation, shall proceed until all permits required therefor have been issued.

M. Upon the recommendation of the Chief Building Inspector or the Planning Board, the Town Board may revoke an existing certificate of occupancy or certificate of zoning compliance and may direct that such occupancy or use be discontinued upon a showing that the subject premises is being occupied or used in violation of the approved site plan. Said order of the Town Board shall be made after a hearing held on notice to the last owner of record of the subject premises as indicated by the current assessment roll of the Town of Brookhaven. In the event that the Town Board directs that such occupancy or use be discontinued or in the event that a parcel is being used or occupied without an approved site plan, the Town Attorney is authorized to commence proceedings in a court of appropriate jurisdiction to restrain said use or occupancy.

N. Posting for applications involving site plans, preliminary subdivisions or final subdivisions. At least one poster, not less than one foot by two feet in size, must be conspicuously posted along each street frontage of the property which is the subject of the application, at least 10 days prior to the date set for the hearing before the Planning Board. This ten-day posting requirement for all applications involving site plans, preliminary subdivisions or final subdivisions shall be required for all such applications submitted on or after the effective date of this amendment. Such poster shall contain the following information:

- (1) A brief explanation of the proposed site plan approval requested.
- (2) That a hearing will be held before the Planning Board at a specified date and the time and place with regard to the proposed hearing.
- (3) Said poster must remain in place until the hearing has been completed and must be removed no later than seven days thereafter. The applicant, or applicant's agent, shall verify that said

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poster is still in place on a daily basis and shall promptly replace that poster should it be removed or defaced.

(4) The Planning Board shall adopt regulations governing the format of said poster and the manner and place in which it is posted. Said Board may require the applicant to use a poster supplied by it, in which event the Planning Board may set a fee to cover the cost of said poster.

(5) On the date of said hearing, the applicant or applicant's agent shall submit an affidavit in such form as shall be approved by the Planning Board, together with a photograph of said poster, said affidavit to state that said poster was posted in conformity with this chapter and in all manners complies with its requirements.

O. Expiration of site plans.

(1) All site plans shall expire three years after the date of final conditional approval, unless a building permit has been issued and substantial construction, with sufficient proof of such substantial construction, having been commenced in reliance thereon.

(2) All site plans and special permits granted pursuant to Article **XXVII** shall expire one year after the date of final conditional approval, unless a building permit has been issued and substantial construction, with sufficient proof of such substantial construction, having been commenced in reliance thereon.

P. Extension of final conditional site plan approval.

(1) Upon application to the Commissioner of Planning, Environment and Land Management seeking an extension of the final conditional site plan approval, the Commissioner may grant the final conditional site plan approval a maximum of three extensions, not to exceed one year each, subject to the applicant sufficiently demonstrating that for each such application:

(a) The extension request is made prior to the expiration of the final conditional site plan approval;

(b) The applicant is diligently trying to meet the conditions of the final conditional site plan approval; and

(c) The applicant is diligently pursuing all other required governmental permits and approvals.

(2) Upon application to the Commissioner of Planning, Environment and Land Management seeking an extension of the final conditional site plan approval granted pursuant to Article **XXVII**, the Commissioner may grant the final conditional site plan approval a maximum

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of one extension, not to exceed one year, subject to the applicant sufficiently demonstrating that for each such application:

(a) The extension request is made prior to the expiration of the final conditional site plan approval;

(b) The applicant is diligently trying to meet the conditions of the final conditional site plan approval; and

(c) The applicant is diligently pursuing all other required governmental permits and approvals.

Q. Inactive site plan applications. Site plan applications which remain incomplete and/or for which the applicant initiates no activity for a period in excess of one year may be deemed withdrawn by the Commissioner of Planning, Environment and Land Management, so long as written notice is provided to the applicant informing said applicant of the Commissioner's intent to deem the application withdrawn at least 30 days prior to the Commissioner's determination. If an application is inactive for more than two years, it shall be deemed withdrawn.

R. For each application for site plan approval, review of an amended site plan or inspection of a site plan, the fee shall be that as established by Town Board resolution. For purposes of said section, the term "on-site improvements" shall include but not be limited to the installation of drainage facilities, the paving of the parking field, and the installation of any curbs or sidewalks.

S. Amendment of site plans. An application for an amendment to a previously approved site plan shall include the previously approved site plan, together with all amendments noted thereon. The Commissioner shall determine compliance with the applicable Town Code provisions as of the date of submission thereof.

T. Upon its review of an application for amendment(s), modification(s) and/or addition(s) to a previously approved site plan and/or existing site development, the Planning Board shall review the entire site plan and existing site development; the Planning Board, in conjunction with its review and approval of the application for amendment(s), modification(s) and/or addition(s) to said site plan, may impose such reasonable conditions as it deems appropriate with respect to existing improvements including parking, landscaping, including but not limited to planting screens, maintenance, additional and/or enhanced landscaping, and any other site features it deems appropriate, and/or to require any reasonable modification to the existing site plan and/or site development as it deems appropriate in connection with its grant of approval of the proposed additional and/or modified site plan development.

Section 15. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-115 entitled "Preliminary site plans." is hereby amended as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

§ 85-115. (Reserved)

Section 16. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-116 entitled "Site plans." is hereby amended as follows:

§ 85-116. (Reserved)

Section 17. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-117 entitled "Minor site plans." is hereby amended as follows:

§ 85-117. Minor site plans.

A. Minor Alterations to an Approved Site Plan. Upon written request, the Commissioner or his/her designee is hereby authorized to review and approve, approve with modifications, or disapprove requests for minor site plan alterations to an approved final site plan (prior to or during construction), to accommodate minor changes resulting from actual field conditions, minor changes required by other governmental agency permits, or minor enhancements or improvements to the approved site plan. The Commissioner, at his/her sole discretion, may decline jurisdiction by referral of any minor site plan alternation to the Planning Board for its review and determination.

B. The Commissioner or his/her designee, is hereby authorized to review, approve or approve with modifications minor site plan applications subject to the following provisions.

(1) Installation or modification of accessory improvements including but not limited to ADA compliance improvements, waste management solutions, emergency generators, vehicle charging stations, HVAC, heat pumps, green energy improvements and similar.

(2) Rehabilitation, revision or change in the façade of an existing building or structure.

(3) Installation or modification of parking areas, storm water collection, landscaping, buffer plantings, fencing, utilities, utility and dumpster pads, recycling pads or enclosures and similar accessory improvements. Existing sites which are not in compliance with the requirements of source separation and arrangement for the collection for recycling pursuant to Chapter 46 of this Code, shall not be penalized and no parking variance shall be required, for the loss of parking stalls resulting from the installation of the required recycling collection areas consistent with Chapter 46 of this Code and the guidelines provided by the of the Department of Recycling and Sustainable Materials Management.

(4) Additions to an existing nonresidential building or new structures that do not exceed 1% of the existing gross floor area or 1,000 square feet, whichever is greater.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(5) Additions and accessory improvements to attached dwelling units that were constructed pursuant to a prior site plan grant.

(6) A change from an existing permitted use(s) to a new permitted use in an existing building or structure where the proposed new use has an increased and higher parking requirement under the Town Code. For multi-tenant structures, the applicant shall obtain from the Building Division a document certifying the current Certificate of Occupancy for subject tenant space(s) of the project.

(7) The Commissioner, at his/her sole discretion, may decline jurisdiction by referral of any minor site plan application to the Planning Board for its review and determination.

C. The applicant shall provide any information and documentation which the Commissioner deems necessary and appropriate for his/her review of the application and may provide additional information that is pertinent to such application.

D. The Commissioner or his/her designee shall take existing improvements into consideration and determine whether or not additional on-site improvements are necessary and/or appropriate, including but not limited to drainage, parking, curbs and walks, landscaping and fencing, and may require such improvements as part of his/her approval of said minor site plan.

E. For existing buildings, structures, and improvements possessing a certificate of occupancy or its equivalent, but do not meet current land development and dimensional standards of this chapter, the Commissioner or his/her designee may require additional on-site improvements that will bring the site into closer conformance with current land development and dimensional standards as are deemed necessary and/or appropriate.

F. Emergency minor site plans.

(1) Damaging winds, torrential rainfall, flooding and storm surge from hurricanes or natural disasters can cause significant damage to motor vehicles. These damaged motor vehicles can impede emergency response efforts and pose a persistent threat to the security, life and health to persons and property in the affected areas and, therefore, are deemed a public health hazard and a public nuisance.

(2) The Commissioner of the Department of Planning, Environment and Land Management is hereby authorized to review emergency minor site plan applications for the temporary storage of motor vehicles. Upon favorable recommendation from the Commissioner of the Department of Planning, Environment and Land Management, the Town Board of the Town of Brookhaven, by resolution, may designate a parcel suitable for temporary parking and storage of damaged motor vehicles, subject to conditions as the Town Board may deem appropriate.

(3) Emergency minor site plans shall be subject to the following criteria:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

- (a) A State of Emergency was declared by the Supervisor of the Town of Brookhaven or the Governor of the State of New York.
 - (b) The proposed site is not located within the Core Area of the Central Pine Barrens.
 - (c) The proposed site is commercially or industrially zoned.
 - (d) The proposed site has received prior site plan approval and all proposed storage shall be located on existing asphalt or stabilized base which was designated for parking of motor vehicles or similar activity on the prior approved site plan.
 - (e) A bond is submitted which is equal to \$200 per vehicle stored on the site.
 - (f) Within six months of approval, submission of proof to the Commissioner that all fluids have been removed from all vehicles stored. Properties cited as noncompliant shall be subject to penalties in accordance with Article XII.
 - (g) All site plan application and expedited review fees as set forth in Town Board resolution have been paid.
- (4) The Commissioner may apply the criteria applicable to site plan review set forth in this chapter at his/her discretion in review of said application(s) and in making a recommendation to the Town Board. The Commissioner, at his/her sole discretion, may decline jurisdiction of any minor emergency site plan request and such application shall require site plan review and approval pursuant to § 85-113 of this chapter.
- (5) The applicant shall be responsible for obtaining building permits and a temporary certificate of use or certificate of occupancy, as applicable.
- (6) Expiration. All approvals for the temporary parking and storage of motor vehicles shall expire six months after the date of emergency minor site plan approval.
- (a) An applicant may submit a request to the Town Board seeking an extension of time limits herein. The Town Board may grant a maximum of one extension, not to exceed six months.
- (7) No application for emergency minor site plan approval may be submitted under this Subsection H, entitled "Emergency minor site plans," after March 31, 2013.

Section 18. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-190 entitled "A Residence District." is hereby amended as follows:

§ 85-190. A Residence District.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

A. Principal uses are as follows:

- (1) One-family dwellings, except that mobile homes shall not be a permitted principal use.
- (2) Churches or similar places of worship and parish houses.
- (3) Convents and monasteries.
- (4) Open farming; provided, however, that no storage of manure, compost, mulch or odor- or dust-producing substances shall be permitted within 150 feet of any street line. The sale at retail or wholesale of farm, garden or nursery products produced on the premises shall be permitted; however, nothing herein shall permit the screening and sale to others of compost or mulch materials.
- (5) Public and parochial schools and private schools having a curriculum similar to that ordinarily given in public schools, but not including day-care facilities.
- (6) Colleges and universities; provided, however, that the plot has an area of not less than 75 acres and a continuous street frontage of not less than 400 feet; and provided further that the total building area shall not exceed 20% of the total plot area; the location of all buildings and structures shall be subject to approval by the Planning Board.
- (7) Museum reuse of historic structures identified on the State or National Register of Historic Places or designated as a local landmark.
- (8) Parks, playgrounds, athletic fields, bathing beaches, bathhouses or boathouses, excluding uses permitted as set forth in § 85-511 of this chapter.
- (9) Private community center, recreation buildings and outdoor recreation facilities as part of a homeowners', condominium or community association.

B. Accessory uses, when located on the same lot with a permitted principal use, are as follows:

- (1) Private garages.
- (2) Offices of a physician, lawyer, architect, teacher or similar professional person residing on the premises and when such use is incidental to such residence; provided, however, that such use shall be within the main building and occupying not more than 1/3 of the first-floor area.
- (3) Customary home occupations only when conducted by the person residing on the premises.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(4) Fences. No fence may be erected having a height greater than four feet from the ground, except as follows:

(a) Where a residence has been erected, a six-foot fence may be erected in the rear yard, provided that, if it is on an interior lot, said six-foot fence may be erected in the rear yard to extend along the rear lot line and along the side lot lines to a point not forward of the front foundation line of the residence, and thence from said lot lines to the front point of said foundation; on a corner lot, a six-foot fence may be erected in the rear yard to extend along the rear lot line and along the secondary front lot lines, except that no such fence shall project into the required primary front yard; and on a through lot, a six-foot fence may be erected in the rear yard along the two side lot lines and the secondary front lot line. A six-foot fence in the secondary front yards on corner lots and in the secondary front yard on through lots shall be considered a structure requiring a building permit. All such fences shall comply with the site visibility requirements of this Code.

(b) If such fence shall be erected along any street, the permitted height thereof shall be measured from the existing elevation of the center line of such street opposite such fence, unless such fence is of open woven wire or other such design as will not obstruct sight visibility. Such height so measured shall not exceed 2 1/2 feet at any point within a radius of 30 feet of the corner formed by any intersecting streets. The provisions hereof shall also apply to hedges or any other densely growing shrubbery.

(c) Wire strand and open woven wire fences six feet in height above ground level shall be permitted on all lot lines of property principally devoted to agriculture, provided that such height so measured shall not exceed four feet at any point within a radius of 30 feet of the corner formed by any intersecting streets.

(d) Use of barbed-wire fencing, ribbon-wire fencing or electrical fencing shall be subject to approval by the Planning Division or, in the event that Planning Division review is not otherwise required, approval by the Zoning Board of Appeals pursuant to Subsection C below.

(5) Signs, as permitted and regulated in Chapter 57A.

(6) Barns, as defined in this chapter, subject to the following:

(a) A maximum height of 18 feet;

(b) A fifty-foot rear yard and fifty-foot side yard setback shall be provided;

(c) To be located in the rear yard only; and

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(d) No more than 25% lot coverage of the rear yard shall be occupied by such structure, except that in the A-5 and A-10 Residential Zoning Districts, it shall be pursuant to the Residential Districts Table of Dimensional Regulations.^[1]

(7) Other customary accessory uses, structures and buildings, provided that such uses are clearly incidental to the principal use and do not include any activity commonly conducted as a business. Except with regard to construction on property principally used for agriculture, any accessory building shall be located on the same lot with the principal building, and no accessory building shall be constructed on a lot until the construction of the main building has actually been commenced, and no accessory building on the lot shall be used until the main building is completed and used.

(8) Accessory apartments, subject to all requirements and limitations set forth in § 85-258.

(9) Detached storage sheds.

(a) All storage sheds shall be considered structures.

(b) Detached storage sheds, not greater than 12 feet in height above surrounding grade and not exceeding 600 square feet in floor area.

(c) Detached storage sheds, not greater than 12 feet in height above surrounding grade and less than or equal to 144 square feet in floor area, may be located not closer than three feet to a side or rear property line. However, said structure may not be located within a required side yard.

(d) Detached storage sheds, not greater than eight feet in height above the surrounding grade, not exceeding 100 square feet in floor area, may be located not closer than three feet to a side or rear property line. Said structure may be located within a required side yard.

(10) Model dwellings. Model dwellings where the same are to be located on lots on an approved final subdivision map or an approved residential site plan and are intended to be used as model dwellings for the sale of homes to be located within the subject project site. Permission for location of said models shall be obtained from the Planning Board and shall be issued for a period not to exceed two years. The Planning Board may renew said permit upon application, provided that the model dwelling has been constructed and used in accordance with the approved site plan.

(11) Greenhouses. Greenhouses, so long as the use of said structure(s) is solely incidental to the permitted principal use and otherwise conforms with the applicable dimensional requirements set forth in this chapter.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(12) Equipment.

(a) All equipment, including but not limited to filters, heaters and pumps, associated with the use or operation of a private swimming pool, may be located in any portion of a side or rear yard and shall not be located less than five feet from any side or rear lot line. Nothing herein shall be construed to amend, supersede or otherwise alter the requirements of Town Code Chapter 50 "Noise Control."

(b) Generators may be located in any portion of a side or rear yard and shall not be located less than five feet from any side or rear lot line. Nothing herein shall be construed to amend, supersede or otherwise alter the requirements of Town Code Chapter 50, Noise Control.

(c) Air-conditioning equipment may be located in any portion of a side or rear yard and shall not be located less than five feet from any side or rear lot line. Nothing herein shall be construed to amend, supersede or otherwise alter the requirements of Town Code Chapter 50, Noise Control.

(13) An outdoor fireplace may be located in any portion of a side or rear yard and shall not be located less than 15 feet from any side or rear lot line and shall comply with all New York State and Town Fire Codes.

(14) Pool house/cabana, as defined in this chapter, subject to the following:

(a) Shall be no larger than 400 square feet in floor area; and

(b) Shall not exceed 14 feet in height; and

(c) Contains no indoor kitchen and is not otherwise designed, equipped, or used for cooking; and

(d) Contains no heat; and

(e) Shall not be used for sleeping purposes; and

(f) Contains no more than one room and bathroom; and

(g) Interior plumbing fixtures shall be limited to a sink plus one bathroom containing a toilet and a sink. No indoor shower shall be established; and

(h) Shall be located in the rear or nonrequired side yards and shall comply with accessory structure setbacks for side and rear lot lines yard; and

(i) Shall not otherwise be configured or used as habitable space.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

C. The following uses shall be permitted when authorized by special permit from the Board of Appeals:

(1) Dwelling models, except for dwelling models approved by the Planning Board pursuant to Subsection **B(9)** above, provided that the following conditions are met:

(a) Site plan review and approval by the Planning Board shall be obtained simultaneously with or prior to the issuance of a special permit.

(b) Off-street parking for at least four automobiles for one model dwelling unit and two additional spaces for each additional adjoining model dwelling unit shall be required.

(c) No exterior spotlighting or floodlighting shall be permitted which will result in annoying glare directed or reflected toward residential dwellings or residential zoning districts.

(d) Prior to the issuance of a special permit for a model dwelling built on a lot that does not conform to the requirements of the zone in which it is located, the owner must execute a consent, in a form acceptable to the Town Attorney, which consent will authorize the Chief Building Inspector to demolish or cause to be removed said model dwelling if the same is not removed by the owner thereof within 45 days of the expiration of the special permit. The applicant shall also consent that all costs and expenses incurred by the Town of Brookhaven in connection with the removal of the model dwelling shall be assessed against the land on which said buildings are located. The amount of such cost and expense shall be determined and audited by the Town Board and shall be reported to the Board of Assessors of the Town of Brookhaven as an amount to be levied and assessed against said premises as an assessment for an improvement to be included in the next succeeding assessment roll of the Town of Brookhaven to be thereafter prepared. Thirty days after the expiration of the special permit, the Chief Building Inspector shall mail a notice to the applicant for the special permit and the latest assessed owner of record for the subject property. Such notice shall indicate that, unless the subject model dwelling is removed within 15 days, the Town will proceed to remove the dwelling and assess the costs against the property. The Chief Building Inspector shall also cause such notice to be posted on the front door of the subject model dwelling. If the dwelling is not removed, the Building Division may cause it to be removed or demolished as above provided.

(e) The special permit shall be issued for a period not to exceed five years. The Zoning Board of Appeals may renew said permit upon application, provided that the model dwelling has been constructed in accordance with the site plan, the conditions attached to the special permit, and this chapter.

(2) Day-care facilities.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(3) Upon a showing of need to protect private property, where the safety of residents will not be placed in jeopardy, barbed-wire fencing, ribbon-wire fencing or electrical fencing, unless the Planning Division has approved or disapproved such use during site plan review.

(4) Other agriculture.

(5) A one-family dwelling occupied by more than eight persons living and cooking together as a single housekeeping unit though non-related by blood, adoption, or marriage, provided that all of the following conditions are met:

(a) Submission of proof of a valid operating certificate, permit, and/or approval having been issued by the appropriate federal, state and/or county agency or department for the proposed use when the same is mandated by law; and

(b) The location of the use does not unduly increase traffic congestion, off-site parking, and noise levels on public streets.

D. The following uses shall be permitted when authorized by special permit from the Planning Board:

(1) Golf courses and country clubs having a plot area of not less than 50 acres.

(2) Human cemeteries.

(3) Voluntary nonprofit ambulance companies.

Section 19. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-270 entitled "Accessory uses" is hereby amended as follows:

§ 85-270. Accessory uses.

A. Customary accessory uses, structures and buildings, provided such uses are clearly accessory and incidental to the principal use and do not include any activity commonly conducted as a business.

B. Indoor and outdoor recreation facilities, guard houses, garages and club houses.

C. Day-care facility provided such use is generally limited to residents of the multifamily development.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

D. Accessory retail/office use provided such use is generally limited to residents of the multifamily development.

Section 20. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-271 entitled "Town Board special permits - accessory uses." is hereby amended as follows:

§ 85-271. (Reserved)

Section 21. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-293 entitled "Accessory uses." is hereby amended as follows:

§ 85-293. Accessory uses.

A. Customary accessory uses, structures and buildings, provided such uses are clearly accessory and incidental to the principal use and do not include any activity commonly conducted as a business.

B. Indoor and outdoor recreation facilities, guard houses, garages and club houses.

C. Accessory retail/office use, provided such use is generally limited to residents of the PRC development.

D. Day-care facilities, provided such use is limited to senior citizens and/or handicapped persons.

Section 22. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-294 entitled "Town Board special permits for accessory uses." is hereby amended as follows:

§ 85-294. (Reserved).

Section 23. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-319 entitled "Accessory uses." is hereby amended as follows:

§ 85-319. Accessory uses.

A. Customary accessory uses, structures and buildings shall be permitted when located on the same lot as the principal authorized use, provided that such uses are clearly incidental to the principal use and do not include any activity conducted as a business.

B. Dining, recreational, social and cultural facilities for the sole use of residents of the community and their guests.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

C. Medical offices, provided that such uses are primarily for the use and benefit of the residents and further provided that said use does not exceed 5,000 square feet in gross floor area or more than 3% of the total gross floor area of the site.

D. Nursing home use, provided that such use does not exceed 40% of the floor area ratio (FAR) of the development and the nursing home use is fully integrated into the planned retirement congregate housing community.

Section 24. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-320 entitled "Planning Board special permits for accessory uses." is hereby amended as follows:

§ 85-320. (Reserved).

Section 25. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-396 entitled "Planning Board Special Permit Criteria for Accessory Uses." is hereby added as follows:

§ 85-396. Planning Board Special Permit Criteria for Accessory Uses.

(1) Golf Driving Ranges for Nighttime use in GC District

(2) All golf driving ranges for nighttime use and associated site improvements shall be set back a minimum distance of 50 feet from any roadway and 50 feet of the lot line of residentially zoned or used properties.

(3) A minimum fifty-foot buffer consisting of natural and undisturbed vegetation, supplemented as needed with a density and quality of plantings equal to five rows of evergreen plantings seven feet high and five feet on center, shall be provided to all adjacent residentially zoned or used properties.

(4) Decorative opaque fencing and/or walls shall be provided along all site property lines which are contiguous with residentially developed or zoned properties, in conformance with Section **85-394.H.(1)** of Town Code.

(5) The location of all golf driving ranges for nighttime use and associated site improvements, including exterior lighting, shall be subject to approval by the Planning Board.

(6) Exterior lighting shall be designed to minimize light pollution impacts to surrounding residential properties to the maximum extent possible, and in accordance with Town Code Exterior Lighting Standards.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(7) The applicant shall provide a noise mitigation plan demonstrating appropriate protections to all adjacent residentially zoned or used properties and demonstrating compliance with Chapter 50 of the Brookhaven Town Code.

(8) If applicable, the applicant shall provide documentation of outreach to the Federal Aviation Administration (FAA) to verify that there will be no impact to air traffic.

§ 85-397. Property previously developed with golf course use.

Properties previously developed with golf course uses and not in conformance with this article shall be exempt from the dimensional and developmental requirements herein. Proposed alteration or expansion shall be made only in accordance with the provisions of this article.

Section 85-398 (Reserved)

Section 26. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-407 entitled "Permitted uses." is hereby amended as follows:

§ 85-407. Permitted uses.

In a J Business District, no building, structure or premises shall be used or occupied and no building or part thereof or other structures shall be so erected or altered, except for one of the following purposes:

- A. Art galleries.
- B. Artist studio, provided all activities take place inside the building.
- C. Bank, without drive-through facility.
- D. Community center.
- E. Day-care facility.
- F. Exhibit hall.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

G. Florist.

H. Lodge

I. Mixed-use buildings, excluding those associated with retail operations.

J. Museums.

K. Non-degree-granting instruction/program, except those associated with manufacturing or driver training.

L. Nonprofit cultural centers.

M. Offices.

N. Open farming; provided, however, that no storage of manure or odor- or dust-producing substances shall be permitted within 150 feet of any street line. The sale at retail or wholesale of farm, garden or nursery products produced on the premises shall be permitted.

O. Personal service shops.

P. Places of worship, parish house, or rectory.

Q. Single-family or two-family dwellings.

R. Standalone farm stand.

S. Undertaking establishment.

T. Veterinary hospital, provided that all activities take place within the building.

Section 27. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-408 entitled "Planning Board special permits." is hereby amended as follows:

§ 85-408. Board of Appeals special permits.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

The following special permit uses, when authorized by the Board of Appeals, shall be subject to the criteria as set forth in Article V, § 85-57(A), in addition to the criteria contained herein:

A. Bed-and-breakfast.

Section 28. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-425 entitled "Permitted uses" is hereby amended as follows:

§ 85-425. Permitted uses.

In a J Business 2 District, no building or structure shall be used or occupied and no building or part thereof or other structures shall be so erected or altered, except for one or more of the following purposes:

A. Art galleries.

B. Assembly and social recreation hall.

C. Automobile parking field.

D. Bank with or without accessory drive-through facility.

E. Bar, tavern or pub.

F. Billiard hall.

G. Bowling alley.

H. Catering hall.

I. College or university, excluding dormitories and other college, university, or school residential facilities.

J. Commercial center.

K. Day-care facility.

L. Delicatessen.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

- M. Dog/Pet Day Care
- N. Dry cleaners.
- O. Exhibit halls.
- P. Health club.
- Q. Indoor Recreation
- R. Laundromats.
- S. Live performance and community theater.
- T. Lodge.
- U. Movie theater, community.
- V. Museum.
- W. Non-degree granting instruction/program, except those associated with manufacturing or driver training.
- X. Nursery/Garden center.
- Y. Office.
- Z. Personal service shops.
- AA. Pharmacy with or without accessory drive-through facility.
- BB. Places of worship, parish house, or rectory.
- CC. Public, private school or parochial school with or without dormitory facilities.
- DD. Restaurant.
- EE. Retail sales establishment.
- FF. Shops and stores for the sale at retail of consumer merchandise and services.
- GG. Shops for custom work and for making articles to be sold at retail on the premises.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

HH. Take-out restaurant.

II. Undertaking establishments.

JJ. Veterinary hospital, provided that all activities take place within the building.

KK. All uses identified as incentive uses within the Transitional Area Overlay District established in connection with the Montauk Highway Corridor Study Land Use Plan for Mastic and Shirley Phase II.

Section 29. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-427 entitled "Planning Board special permits" is hereby amended as follows:

§ 85-427. Planning Board special permits.

The following special permit uses, when authorized by the Planning Board, shall be subject to the criteria as set forth in Article VIII, § 85-107, in addition to the criteria contained herein:

A. Nightclub or Dance Hall

B. Convenience stores.

C. Major restaurant without drive-through facility.

D. Motor vehicle rental.

E. Single-family dwelling.

F. Indoor smoking establishments.

Section 30. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-428 entitled "Accessory uses" is hereby amended as follows:

§ 85-428. Accessory uses.

Customary accessory uses, structures and buildings shall be permitted when located on the same lot as the principal authorized use, provided that such uses are clearly incidental to the principal use and do not include any activity conducted as a business.

A. Outdoor display area as an accessory use to a retail sales establishment.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

- B. Fuel cell facility for on-site consumption.
- C. Mega-laundromat as an accessory use to a commercial center.

Section 31. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-430 entitled "Planning Board special permits for accessory uses" is hereby amended as follows:

§ 85-430. Planning Board special permits for accessory uses.

The following special permit uses, when authorized by the Planning Board, shall be subject to the criteria as set forth in Article **VIII**, § **85-107**, in addition to the criteria contained herein:

- A. Major restaurant as part of a commercial center.
- B. Outdoor or overnight parking of registered vehicles.
- C. Outdoor display.
- D. Outside seating as an accessory use to a restaurant, take-out restaurant or major restaurant.

Section 32. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-433 entitled "Special permit criteria" is hereby amended as follows:

§ 85-433. Special permit criteria.

In addition to the criteria set forth within Article **VI**, § **85-67**, or Article **VIII**, § **85-107**, the following special permit criteria shall be required for the uses so indicated:

A. Bar, Tavern, or Pub

- (1) The maximum gross floor area shall not exceed 4,999 square feet.
- (2) No outdoor storage of kegs, crates or empty bottles/cans shall be permitted. A dumpster enclosure for one dumpster for rubbish, as well as one dumpster for cardboard recycling. The dumpster enclosure shall consist of walls measuring eight feet in height, which complements the building façade.
- (3) The above use shall be prohibited within 500 feet of the lot line of residentially zoned or used properties.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(4) A maintenance plan shall be provided for management of litter and general upkeep of the premises.

(5) Two (2) designated loading spaces required near the entrance.

B. Convenience store.

(1) Freestanding convenience stores.

(a) One off-street truck loading space with a minimum width of 12 feet and a minimum length of 40 feet shall be required. Aisles and turning areas shall provide adequate internal circulation, as determined by the Planning Board.

(b) All aisles within parking areas shall have a minimum width of 24 feet.

(c) A dumpster enclosure for one dumpster for rubbish, as well as one dumpster for cardboard recycling, unless adequate space for cardboard recycling storage can be demonstrated by the applicant within the convenience store. The dumpster enclosure shall consist of walls measuring eight feet in height, which complements the building facade.

(d) Buffers and plantings shall be in accordance with § 85-50B(2)(b), except that the rear yard setback shall be 25 feet. Said buffers and plantings shall be maintained and dead or diseased plantings shall be replaced as necessary.

(e) A minimum six-foot-high solid (opaque) fence shall be placed along any property line adjacent to a residential district or use.

(f) Outdoor sales, storage and display of goods shall be prohibited.

(g) Neon lights in windows shall be prohibited.

(h) Waste receptacles for customer use shall be provided and maintained on site.

(i) A maintenance plan shall be provided for management of litter and general upkeep of the premises.

(j) The required minimum lot size shall be one acre, unless the Planning Board, in its discretion, and upon a finding of compliance with the criteria set forth in Subsection A(1)(a) through (h) above, and Article VIII, § 85-107, approves a small lot size of no less than one-half acre. In considering a lot size smaller than one acre, the Planning Board shall impose the following conditions:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

[1] Prohibitions against deliveries by tractor trailer;

[2] Adequate area for traffic circulation;

[3] Any other conditions as the Board determines will protect neighboring properties and enhance community character, including, but not limited to, architectural design and enhancements thereto.

(2) Shopping center convenience stores and PADs.

(a) Unless otherwise required by a previous site plan approval, a dumpster enclosure shall be provided for one dumpster for rubbish, as well as one dumpster for cardboard recycling, unless adequate space for cardboard recycling storage can be demonstrated by the applicant within the convenience store. The dumpster enclosure shall consist of walls measuring eight feet in height, which complements the building facade.

(b) Outdoor sales, storage and display of goods shall be prohibited.

(c) Neon lights in windows shall be prohibited.

(d) Waste receptacles for customer use shall be provided and maintained on site.

(e) A maintenance plan shall be provided for management of litter and general upkeep of the premises.

(f) The minimum lot size shall be 65,000 square feet unless the Planning Board, in its discretion and upon a finding of compliance with the criteria set forth in Subsection **A(1)(a)** through **(h)** above and Article **VIII**, § **85-107**, may approve a smaller lot size of no less than 0.75 acre. In considering a lot size smaller than 65,000 square feet, the Planning Board shall impose the following conditions:

[1] Prohibitions against deliveries by tractor trailer;

[2] Adequate area for traffic circulation;

[3] Any such other conditions as the Board determines will protect neighboring properties and enhance community character, including architectural design and enhancements thereto.

C. Large commercial retailer.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(1) A minimum of 35% of the site shall be maintained as natural and/or landscaped area.

D. Major restaurant (with or without drive-through facility).

(1) A minimum landscaped area of 50 feet shall be maintained adjacent to all road frontages.

(2) A minimum of 35% of the site shall be maintained as natural and/or landscaped area.

(3) Architectural elevations shall be subject to the review and approval of the Planning Board, and/or shall be in compliance with the recommendation of the adopted local land use, hamlet or corridor study. Vivid and/or reflective colors shall be prohibited.

(4) No exterior menu board signs shall be located within the required front yard setback.

(5) No indoor or outdoor play area shall be located within 40 feet of any street line. No indoor or outdoor play area shall be located within a front yard.

(6) A minimum natural or landscaped buffer area as required by the land development standards of this chapter.

(7) Queuing lanes shall be separate and distinct from parking aisles.

E. Motor vehicle rental.

(1) No more than five rental vehicles.

(2) All rental vehicles shall be screened from view with a hedge, berm and/or decorative wall or fence in accordance with Town standards.

(3) No repair or maintenance of rental vehicles permitted on site.

F. Indoor smoking establishments:

(1) Shall be prohibited within a five-hundred-foot radius of any area zoned for residential use.

(2) Shall be prohibited within a one-mile radius of another such use.

(3) Shall be prohibited within 1,000 feet of the lot line of any premises used for a school, church or other place of religious worship, park, playground, or playing field, library, hospital or similar public or semi-public-place of general congregation, or non-degree-granting instruction/programs.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

G. Outdoor or overnight parking of registered vehicles.

- (1) Outdoor or overnight parking of registered vehicles shall be set back a minimum distance of 50 feet from any roadway.
- (2) All outdoor or overnight parking of registered vehicles shall be screened from view with fencing, landscaping and in accordance with a site plan, which shall be subject to the review and approval of the Planning Board.
- (3) There shall be no outdoor or overnight parking of registered vehicles within the primary or secondary front yard.

H. Outdoor display.

- (1) All outdoor display shall be set back a minimum distance of 25 feet from any roadway. The entire portion of the outdoor display setback shall be landscaped in accordance with an approved site plan.

I. Outside seating as an accessory use to a take-out restaurant, restaurant, or major restaurant use.

- (1) Outside seating shall be permitted for food service purposes only.
- (2) Between the hours of 11:00 p.m. and 8:00 a.m., outdoor loudspeakers, exterior live entertainment or dancing of any kind shall be prohibited.
- (3) Within 1,000 feet of any residential use or zone, outdoor loudspeakers, exterior live entertainment or dancing of any kind shall be prohibited.
- (4) Within 250 feet of any residence, outdoor seating shall be prohibited.
- (5) Outside seating shall be permitted on the subject parcel only.

J. Single Family Dwelling or Two Family Dwelling

- (1) Minimum Lot area for a Two-Family Dwelling shall be 20,000 square feet.
- (2) A minimum of 10% of the parcels along the same roadway frontage within 500 feet in either direction of the subject parcel shall be of a residential use. The applicant shall provide a 500 foot list demonstrating same.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(3) A minimum of 50% of the parcels in a surrounding 500 foot radius shall be of a residential use. The applicant shall provide a 500 foot radius map demonstrating same.

(4) Any additional or accessory use beyond customary home occupations as stated in the code or as determined by the Building Division shall be restricted. No other principle permitted uses, or accessory uses within this zone, shall be permitted.

Section 33. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-446 entitled "Permitted uses" is hereby amended as follows:

§ 85-446. Permitted uses.

In a J Business 4 District, no building or structure shall be used or occupied and no building or part thereof or other structures shall be so erected or altered, except for one or more of the following purposes:

A. Art gallery.

B. Bank with or without drive through.

C. Day-care facility.

D. Exhibit hall.

E. Lodge

F. Museum.

G. Office.

H. Places of worship.

I. Undertaking establishment/mortuary.

J. Veterinary hospital, provided that all activities take place within the building.

Section 34. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-447 entitled "Planning Board special permits" is hereby amended as follows:

§ 85-447. (Reserved).

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Section 35. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-449 entitled "Planning Board special permits for accessory uses" is hereby amended as follows:

§ 85-449. Planning Board special permits for accessory uses.

The following special permit uses, when authorized by the Planning Board, shall be subject to the criteria as set forth in Article VIII, § 85-107, in addition to the criteria contained herein:

- A. Restaurant as an accessory use to a permitted principal use.
- B. Take-out restaurant as an accessory use to a permitted principal use.

Section 36. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-459 entitled "Permitted uses" is hereby amended as follows:

§ 85-459. Permitted uses.

In a J Business 5 District, no building, structure or premises shall be used or occupied and no building or part thereof or other structures shall be so erected or altered, except for one or more of the following purposes:

- A. Marina.
- B. Assembly and social recreation hall.
- C. Bar, tavern or pub.
- D. Billiard hall.
- E. Commercial shipyard or boat repair yard.
- F. Ferry terminal/facility.
- G. Indoor recreation
- H. Laundromat.
- I. Regional theater.

Section 37. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-460 entitled "Town Board special permits" is hereby amended as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

§ 85-460. Town Board special permits.

The following special permit uses, when authorized by the Town Board, shall be subject to the criteria as set forth in this chapter, in addition to the criteria contained herein:

- A. Commercial boat storage, whether indoor or outdoor.
- B. Laundromat, mega.
- C. Major restaurant with accessory drive-through.
- D. Motor vehicle dealership.
- E. Motor vehicle fueling station.
- F. Motor vehicle wash.
- G. Outdoor storage.

Section 38. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-461 entitled "Planning Board special permits" is hereby amended as follows:

§ 85-461. Planning Board special permits.

The following special permit uses, when authorized by the Planning Board, shall be subject to the criteria as set forth in this chapter, in addition to the criteria contained herein:

- A. Convenience store, unless such convenience store is accessory to a motor vehicle fueling station, in which case a Town Board special permit is required pursuant to this chapter.
- B. Major restaurant without accessory drive-through.
- C. Mini-storage warehouse.
- D. Motor vehicle rental.
- E. Motor vehicle repair, with or without a depot as may be required by Chapter 66.
- F. Nursery/Garden Center
- G. Off-track betting parlor.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

H. Outside display.

I. Retail sales.

J. Stone and mason supply.

K. Taxi and limousine station.^[1]

L. Night club or Dance Hall

Section 39. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-462 entitled "Accessory uses" is hereby amended as follows:

§ 85-462. Accessory uses.

Customary accessory uses, structures and buildings shall be permitted when located on the same lot as the principal authorized use, provided that such uses are clearly incidental to the principal use and do not include any activity conducted as a business.

A. Walk-up counter or window service as an accessory use to a major restaurant.

B. Fuel cell facility for on-site consumption.

C. Retail, office and/or wholesale sales in association with and directly related to a permitted principal.

Section 40. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-463 entitled "Town Board special permits for accessory uses" is hereby amended as follows:

§ 85-463. Town Board special permits for accessory uses.

The following special permit uses, when authorized by the Town Board, shall be subject to the criteria as set forth in this chapter, in addition to the criteria contained herein:

A. Convenience store as an accessory use to a motor vehicle fueling station.

Section 41. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-467 entitled "Special permit criteria" is hereby amended as follows:

§ 85-467. Special permit criteria.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

In addition to the criteria set forth in this chapter, the following special permit criteria shall be required for the uses so indicated:

A. Commercial boat storage, whether indoor or outdoor.

- (1) Outdoor boat rack storage shall not exceed 35 feet high, inclusive of all boats and appurtenances, with a maximum of a two-level dry rack storage system.
- (2) The location of the rack storage shall be determined by the Planning Board.
- (3) Screening, buffers and fencing shall be provided in accordance with the land development standards.

B. Convenience store as an accessory and incidental use to a permitted motor vehicle fueling station.

(1) Parking and stacking areas required for the fueling pumps shall not be counted as parking for the convenience store. The applicant must demonstrate that the convenience store has sufficient parking allocated so that there will be no interference with the fueling station operation. In connection therewith, the applicant must demonstrate a plan whereby vehicles wishing to receive fueling services can do so without inconvenience due to the operation of the convenience store.

(2) All convenience stores shall have public restrooms attached thereto.

(3) A maximum of 750 square feet of building area shall be devoted to the retail sale and display area, and the total building area shall not exceed 1,500 square feet, except as follows:

(a) For applications approved prior to September 1, 2022:

[1] An increase in building area in excess of 1,500 square feet shall require:

[a] Pine Barrens Credit redemption. Pine Barrens Credit redemption shall be calculated at 0.5 Pine Barrens Credit for each additional 750 square feet of building area; or

[b] Land use intensification mitigation fee. Payment made to the Joseph Macchia Environmental Preservation Capital Reserve Fund in the amount as established by Town Board resolution for each additional 750 square feet of building area.

(b) For applications approved after September 1, 2022:

[1] An increase in building area in excess of 1,500 square feet shall require:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

[a] Land use intensification mitigation fee. Payment made to the Joseph Macchia Environmental Preservation Capital Reserve Fund in the amount as established by Town Board Resolution for each additional 750 square feet of building area.

[2] In no case shall the total building area exceed 3,000 square feet.

(4) The Planning Board, in conjunction with the site plan, shall approve all signs displayed at the site in connection with the convenience store. Portable or mobile signs advertising any items being sold on the site are prohibited.

(5) Outside display shall be prohibited.

(6) A dumpster enclosure for one dumpster for rubbish, as well as one dumpster for cardboard recycling, unless adequate space for cardboard recycling storage can be demonstrated by the applicant within the convenience store. The dumpster enclosure shall consist of walls measuring eight feet in height, which complement the building facade.

(7) Buffers and plantings in accordance with the land development standards, except that the rear yard setback shall be 40 feet.

(8) A minimum six-foot-high solid (opaque) fence along any property line adjacent to a residential district or use.

(9) Waste receptacles for customer use shall be provided and maintained on site.

C. Freestanding convenience stores.

(1) One off-street truck loading space with a minimum width of 12 feet and a minimum length of 40 feet shall be required. Aisles and turning areas shall provide good internal circulation.

(2) All aisles within parking areas shall have a minimum width of 24 feet.

(3) A dumpster enclosure for one dumpster for rubbish, as well as one dumpster for cardboard recycling, unless adequate space for cardboard recycling storage can be demonstrated by the applicant within the convenience store. The dumpster enclosure shall consist of walls measuring eight feet in height, which complement the building facade.

(4) Buffers and plantings in accordance with the land development standards.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

- (5) A minimum six-foot-high solid (opaque) fence along any property line adjacent to a residential district or use.
- (6) Outdoor sales, storage and display of goods shall be prohibited.
- (7) Waste receptacles for customer use shall be provided and maintained on site.
- (8) A maintenance plan for management of litter and general upkeep of the premises.
- (9) The required minimum lot size shall be one acre, unless the Planning Board, in its discretion and upon a finding of compliance with the criteria set forth in this chapter, Subsection **C(1)** through **(8)** above, may approve a small lot size of no less than one-half acre. In considering a lot size smaller than one acre, the Planning Board shall impose the following conditions:
 - (a) Prohibitions against deliveries by tractor trailer;
 - (b) Adequate area for traffic circulation;
 - (c) Any such other conditions as the Board determines will protect neighboring properties and enhance community character, including architectural design and enhancements thereto.

D. Laundromat, mega.

- (1) Minimum of 100 feet from the building to the property lines.
- (2) Minimum of one-hundred-seventy-five-foot natural and undisturbed buffer from any freshwater and/or tidal wetlands.
- (3) Minimum of 150 feet from the property line of the nearest parcel in residential use or zoned for residential use. Said setback requirement shall apply to dumpster enclosures as well.
- (4) No vents or doorways shall face a residential use or residential district.
- (5) A minimum of 30% of the site shall be maintained as landscaped or natural area.
- (6) All vents and mechanicals above the roofline shall be screened from view from all sides with architectural treatment.
- (7) Review by the public entity providing water service.

E. Major restaurant.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(1) A minimum landscaped area of 40 feet shall be maintained adjacent to all road frontages.

(a) For applications approved prior to September 1, 2022:

[1] Any waiver or reduction of the minimum landscape area shall require:

[a] Pine Barrens Credit redemption. Pine Barrens Credit redemption shall be calculated at 0.25 Pine Barrens Credits; or

[b] Land use intensification mitigation fee. Payment made to the Joseph Macchia Environmental Preservation Capital Reserve Fund as established by Town Board resolution.

(b) For applications approved after September 1, 2022:

[1] Any waiver or reduction of the minimum landscape area shall require:

[a] Land use intensification mitigation fee. Payment made to the Joseph Macchia Environmental Preservation Capital Reserve Fund in the amount as established by Town Board resolution.

(2) A minimum of 35% of the site shall be maintained as natural and/or landscaped area.

(a) For applications approved prior to September 1, 2022:

[1] Any waiver or reduction of the minimum landscape area shall require:

[a] Pine Barrens Credit redemption. Pine Barrens Credit redemption shall be calculated at 0.25 Pine Barrens Credits; or

[b] Land use intensification mitigation fee. Payment made to the Joseph Macchia Environmental Preservation Capital Reserve Fund in the amount as established by Town Board resolution.

(b) For applications approved after September 1, 2022:

[1] Any waiver or reduction of the minimum landscape area shall require:

[a] Land use intensification mitigation fee. Payment made to the Joseph Macchia Environmental Preservation Capital Reserve Fund in the amount as established by Town Board resolution.

(3) No exterior menu board signs shall be located within the required front yard setback.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

- (4) Exterior menu board or speakers shall not face any residential use or zone.
- (5) No indoor or outdoor play area shall be located within a front yard.
- (6) There shall be a minimum of 12 queuing spaces for each drive-through window.
- (7) Queuing lanes shall be separate and distinct from parking aisles.

F. Mini-storage warehouse.

- (1) Storage shall be limited to dead storage only. The storage of explosives, flammable, toxic or otherwise hazardous chemicals and/or other materials shall be prohibited.
- (2) Walls exceeding one story in height, which are visible from off site, shall be architecturally enhanced with pilasters, corbelled cornices, or similar ornamentation to the satisfaction of the Planning Board.
- (3) Storage unit doors shall be screened from visibility from adjoining residentially zoned or residentially developed properties and from public streets to the satisfaction of the Planning Board.
- (4) A minimum natural or landscaped area of 50 feet shall be maintained adjacent to all road frontages.
- (5) All paved areas, including parking and parking aisle areas, shall be screened from view with landscaping or natural areas and/or decorative fencing to the satisfaction of the Planning Board.
- (6) Decorative walls or fencing shall be provided along all setback lines; decorative opaque walls and/or fencing shall be provided along all site property lines which are contiguous with residentially developed and/or zoned properties; other types of fencing may be permitted elsewhere on site subject to Planning Board review and approval.
- (7) Parking stalls and loading areas adjacent to storage buildings may encroach on interior roadway 30 feet or wider, exclusive of required parking stalls, for office(s) or living quarters.

G. Motor vehicle fueling station.

- (1) The use shall be limited to the retail sale of motor fuels, lubricants and other motor vehicle supplies, including spark plugs, batteries, tires and other minor parts for the repair and upkeep of motor vehicles. Minor repairs and servicing shall be permitted after the review and approval of

(If additional space is needed, attach pages the same size as this sheet, and number each.)

the Town Board and the issuance of a special permit, except that body and fender work is expressly prohibited.

(2) No repair work shall be performed in the open. All repair work, excluding emergency service, shall be conducted only between the hours of 7:00 a.m. and 9:00 p.m.

(3) The overnight storage of registered vehicles shall only be permitted with the review and approval of the Town Board and the issuance of a special permit. There shall be no outdoor storage of dismantled cars.

(4) A motor vehicle fueling station shall be prohibited within 500 feet from any lot line bounding an area of public assembly, such as a hospital, church, library, playground, school, community center or theater.

(5) The Planning Board, in conjunction with the site plan, shall approve all signs displayed at the site in connection with the motor vehicle fueling station. Portable or mobile signs advertising any items being sold on the site are prohibited.

(6) Outside display shall only be permitted with the review and approval of the Town Board and the issuance of a special permit.

(7) Required standards. The Town Board hereby finds that many of the new public motor vehicle fueling stations and recently remodeled public motor vehicle fueling stations located within the Town of Brookhaven are being designed and constructed as one-hundred-percent self-service facilities. These facilities do not adequately address the needs of the elderly or the physically impaired, who find it difficult, if not impossible, to operate self-service fueling pumps. In consideration of the foregoing, the following standards shall be required of all self-service public motor vehicle fueling stations:

(a) At least one public fuel pump island shall be full service for use by the general public or by the physically impaired or elderly persons between the hours of 8:00 a.m. through 8:00 p.m. during any days on which the public fueling station is open for business.

(8) Curb cuts. A maximum of one curb cut for every 75 feet of road frontage shall be permitted. No part of a strip 25 feet in width adjoining any lot or land in a residence district or adjoining a street intersection shall be used for providing access to the site. Driveways and curb cuts shall have a minimum width of 20 feet and a maximum width of 35 feet at the curblines. Driveways shall be spaced a minimum of 25 feet apart.

(9) Screening. Buffers and fencing shall be provided in accordance with the land development standards.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

H. Motor vehicle dealership.

- (1) Each site shall contain designated areas for customer and employee parking in addition to outside display and vehicle storage areas.
- (2) All vehicle display shall be set back a minimum distance of 25 feet from any roadway. This setback area must be maintained as a natural or landscaped area in accordance with a site plan, which shall be subject to the review and approval of the Planning Board.
- (3) The loading and unloading of vehicles must take place on site within a designated loading/unloading zone. There shall be no loading or unloading permitted within the front yard.

I. Motor vehicle rental.

- (1) All rental vehicles shall be screened from view with a hedge, berm and/or decorative wall or fence in accordance with Town standards.
- (2) Accessory uses, including motor vehicle wash and/or vacuum stations, shall be solely for the use of the rental dealership and shall be adequately screened by vegetative planting(s) and/or fencing from all residentially zoned and/or residentially developed properties.

J. Motor vehicle repair.

- (1) All repair work shall take place within the building. All repair work, excluding emergency service, shall be conducted only between the hours of 7:00 a.m. and 9:00 p.m.
- (2) An area of sufficient size, as determined by the Board, shall be required for the outdoor, overnight parking of registered vehicles with the issuance of a special permit, subject to criteria specified herein. Said area shall be in addition to any depot required by Chapter 66.
- (3) Overhead doors shall not face the street or any residentially zoned or used property.
- (4) No motor vehicle repair shall be erected, altered or used within 200 feet of any premises used for either an elementary or high school, public library, church, hospital or firehouse.

K. Motor vehicle wash.

- (1) Decorative walls or fencing shall be provided along all setback lines; decorative opaque walls and/or fencing shall be provided along all site property lines which are contiguous with

(If additional space is needed, attach pages the same size as this sheet, and number each.)

residentially developed and/or zoned properties; other types of fencing may be permitted elsewhere on site subject to Planning Board approval.

(2) Street frontages shall be fully landscaped and/or shall remain natural with enhancing landscaping and/or revegetation.

(3) A minimum of 20 queuing spaces for each automatic wash bay and a minimum of five queuing spaces for each self-service wash bay shall be maintained.

(4) A finishing area sufficient to accommodate a minimum of 10 vehicles for each automatic wash bay and two vehicles for each self-service wash bay shall be maintained.

(5) Minimum setbacks for all structures and outdoor facilities and/or areas of operations, including but not limited to paved driveways, dumpster enclosure(s), etc., shall be 50 feet from all contiguous residentially developed and/or residentially zoned properties.

(6) All runoff generated by the operation shall be contained on-site; runoff carryover onto an adjoining public right-of-way or contiguous property shall be presumptive grounds for revocation of the special permit.

(7) Vacuums shall be subject to a one-hundred-foot setback from residential uses or residentially zoned parcels; vacuums shall be adequately screened by vegetative planting(s) and/or fencing from all residentially zoned and/or developed properties.

L. Outside display.

(1) All display shall be set back a minimum distance of 25 feet from any roadway. The entire portion of the display setback shall be landscaped in accordance with the approved site plan.

M. Outside seating as an accessory use to a take-out restaurant, restaurant, or major restaurant use.

(1) Outside seating shall be permitted for food service purposes only.

(2) Between the hours of 11:00 p.m. and 8:00 a.m., outdoor loudspeakers, exterior live entertainment or dancing of any kind shall be prohibited.

(3) Within 1,000 feet of any residential use or zone, outdoor loudspeakers, exterior live entertainment or dancing of any kind shall be prohibited.

(4) Within 250 feet of any residence, outdoor seating shall be prohibited.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(5) Outside seating shall be permitted on the subject parcel only.

N. Outdoor storage.

(1) All outdoor storage shall be screened from visibility from adjoining roadways with landscaping and/or decorative fencing in accordance with Town standards.

(2) Outdoor storage within the primary or secondary front yard shall be prohibited.

(3) Outdoor storage shall be set back a minimum distance of 50 feet from any roadway and 25 feet from any side or rear property line.

O. Stone and mason supply and Nursery/Garden Center.

(1) All display shall be set back a minimum distance of 25 feet from any roadway. Outdoor display areas shall be physically delineated as shown on the approved site plan.

(2) A minimum landscaped area of 50 feet shall be maintained adjacent to any residential use or zone.

P. Taxi and limousine station.

(1) All vehicles shall be screened from view with a hedge, berm and/or decorative wall or fence in accordance with Town standards.

(2) Passenger vehicles shall be limited to fewer than 20 passengers.

(3) Accessory uses, including motor vehicle wash and/or vacuum stations, shall be solely for the use of the taxi or limousine station and shall be adequately screened by vegetative planting(s) and/or fencing from all residentially zoned and/or residentially developed properties.

Q. Retail sales.

(1) Shall only be permitted in conjunction with other principal uses and special permit principal uses. Retail sales shall not be the sole use on the site.

(2) The maximum building area shall not exceed 5% of the total lot area of the site.

(3) The minimum lot area shall be three acres.¹²¹

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Section 42. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-476 entitled "Permitted uses" is hereby amended as follows:

§ 85-476. Permitted uses.

In the MSB District, no building, structure or premises shall be used or occupied and no building or part thereof or structure shall be erected or altered, except for one or more of the following purposes:

- A. Artist studio.
- B. Assembly and social recreation hall.
- C. Bank with or without accessory drive-through facility.
- D. Bar, tavern or pub.
- E. Billiard hall.
- F. Catering hall.
- G. Community movie theater.
- H. Convenience store with GFA not exceeding 1,000 sq. ft.
- I. Delicatessen.
- J. Dry cleaner.
- K. Health club.
- L. Indoor recreation.
- M. Laundromat.
- N. Live performance community theater.
- O. Lodge
- P. Major restaurant, without accessory drive-through.
- Q. Museum.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

R. Non-degree-granting instruction/programs, except those associated with manufacturing or driver training.

S. Office.

T. Personal service shops.

U. Pharmacy, without drive-through.

V. Place of worship.

W. Restaurant.

X. Retail sales establishment.

Y. Second story of building restricted to residential or office use.

Z. Shops for custom work and for making articles to be sold at retail on the premises.

AA. Take-out restaurant.

BB. Undertaking establishment (funeral home).

CC. Veterinary hospital, provided that all activities take place within the building.

Section 43. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-478 entitled "Planning Board special permits" is hereby amended as follows:

§ 85-478. Planning Board special permits.

The following special permit uses, when authorized by the Planning Board, shall be subject to the criteria as set forth in this chapter, in addition to the criteria contained herein:

A. Convenience store with GFA exceeding 1,000 sq. ft.

B. Day care (in accordance with § 85-259).

C. Uses within a designated redevelopment initiative.

D. Nightclub or Dance Hall

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Section 44. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-483 entitled "Special permit criteria" is hereby amended as follows:

§ 85-483. Special Permit Criteria.

In addition to the special permit criteria set forth in Article VI, § 85-67, or Article VIII, § 85-107, the following special permit criteria shall be required for the uses so indicated:

A. Convenience store.

(1) Freestanding convenience stores.

(a) One off-street truck loading space with a minimum width of 12 feet and a minimum length of 40 feet shall be required. Aisles and turning areas shall provide adequate internal circulation, as determined by the Planning Board.

(b) All aisles within parking areas shall have a minimum width of 24 feet.

(c) A dumpster enclosure for one dumpster for rubbish, as well as one dumpster for cardboard recycling, unless adequate space for cardboard recycling storage can be demonstrated by the applicant within the convenience store. The dumpster enclosure shall consist of walls measuring eight feet in height, which complements the building facade.

(d) Buffers and plantings shall be in accordance with § 85-50B(2)(b), except that the rear yard setback shall be 25 feet. Said buffers and plantings shall be maintained and dead or diseased plantings shall be replaced as necessary.

(e) A minimum six-foot-high solid (opaque) fence shall be placed along any property line adjacent to a residential district or use.

(f) Outdoor sales, storage and display of goods shall be prohibited.

(g) Neon lights in windows shall be prohibited.

(h) Waste receptacles for customer use shall be provided and maintained on site.

(i) A maintenance plan shall be provided for management of litter and general use of the premises.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(j) The required minimum lot size shall be one acre, unless the Planning Board, in its discretion, and upon a finding of compliance with the criteria set forth in Subsection A(1)(a) through (h) above, and Article VIII, § 85-107, approves a small lot size of no less than one-half acre. In considering a lot size smaller than one acre, the Planning Board shall impose the following conditions:

[1] Prohibitions against deliveries by tractor trailer;

[2] Adequate area for traffic circulation;

[3] Any other conditions as the Board determines will protect neighboring properties and enhance community character, including, but not limited to, architectural design and enhancements thereto.

(2) Shopping center convenience stores and PADs.

(a) Unless otherwise required by a previous site plan approval, a dumpster enclosure shall be provided for one dumpster for rubbish, as well as one dumpster for cardboard recycling, unless adequate space for cardboard recycling storage can be demonstrated by the applicant within the convenience store. The dumpster enclosure shall consist of walls measuring eight feet in height, which complements the building facade.

(b) Outdoor sales, storage and display of goods shall be prohibited.

(c) Neon lights in windows shall be prohibited.

(d) Waste receptacles for customer use shall be provided and maintained on site.

(e) A maintenance plan shall be provided for management of litter and general upkeep of the premises.

(f) The minimum lot size shall be 65,000 square feet unless the Planning Board, in its discretion and upon a finding of compliance with the criteria set forth in Subsection A(1)(a) through (h) above and Article VIII, § 85-107, may approve a smaller lot size of no less than 0.75 acre. In considering a lot size smaller than 65,000 square feet, the Planning Board shall impose the following conditions:

[1] Prohibitions against deliveries by tractor trailer;

[2] Adequate area for traffic circulation;

(If additional space is needed, attach pages the same size as this sheet, and number each.)

[3] Any such other conditions as the Board determines will protect neighboring properties and enhance community character, including architectural design and enhancements thereto.

B. Hotel.

(1) Marquee sign shall not extend more than 10 feet beyond the face of the building.

C. Drive-through facility.

(1) Drive-through facilities may only be located to the rear or the side of the principal building.

(2) Rear yard drive-through facilities shall have no direct roadway access.

(3) Side yard drive-through facilities shall have a one-way access exiting the site for only the drive-through facility.

(4) Drive-through facilities shall not traverse through any front yard.

(5) Queuing shall be provided pursuant to Town Code standards.

(6) Drive-through facilities shall be screened from view of the primary or secondary main street.

D. Public or private parking garage.

(1) Parking garages shall be located to the rear of a Main Street Business District. Frontage along the main street district shall be limited to a single point of access with a maximum width of 50 feet. Additional frontage shall be required adjacent to a secondary roadway or municipal or shared parking area.

E. Second or third story of building restricted to residential use.

(1) A minimum of 600 square feet shall be required in connection with each unit.

(2) The maximum permitted density shall be six units per acre.

(3) Each residential unit shall have a minimum of one designated off-street parking stall.

Section 45. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-515 entitled "Town Board special permits" is hereby amended as follows:

§ 85-515. Town Board special permits.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

The following special permit uses, when authorized by the Town Board, shall be subject to the criteria as set forth in Article VI, § 85-67, in addition to the criteria contained herein:

- A. Motorized recreation.
- B. Outdoor amusement and/or theme parks, zoos, game farms, except for those permitted uses set forth under § 85-514 above.
- C. Outdoor recreation.
- D. Regional theater.

Section 46. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-516 entitled "Accessory uses" is hereby amended as follows:

§ 85-516. Accessory uses.

- A. Customary accessory uses, structures and buildings shall be permitted when located on the same lot as the principal authorized use, provided that such uses are clearly incidental to the principal use.
- B. Game room(s) incidental to a permitted principal use.
- C. Office(s) incidental to a permitted principal use.
- D. Retail sales.
- E. Fuel cell facility for on-site consumption.
- F. Major restaurant as an accessory use to a permitted principal recreational use.
- G. Restaurant as an accessory use to a permitted principal recreational use.
- H. Take-out restaurant as an accessory use to a permitted principal recreational use.
- I. Major restaurant, without a drive-through, as an accessory use to a permitted principal recreational use.

Section 47. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-517 entitled "Town Board special permits for accessory uses" is hereby amended as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

§ 85-517. (Reserved).

Section 48. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-518 entitled "Planning Board special permits for accessory uses" is hereby amended as follows:

§ 85-518. Planning Board special permits for accessory uses.

The following special permit uses, when authorized by the Planning Board, shall be subject to the criteria as set forth in Article VIII, § 85-107, in addition to the criteria contained herein:

A. Outside seating as an accessory use to an accessory restaurant, accessory take-out restaurant or major restaurant without a drive-through.

Section 49. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-521 entitled "Reserved" is hereby amended as follows:

§ 85-521. Special Permit Criteria.

A. Motorized Recreation.

(1) Minimum Lot size shall be 1 acre for any outdoor motorized recreation facility.

(2) All outdoor motorized recreation facilities shall be set back a minimum distance of 100 feet from all adjacent residentially zoned or used properties.

(3) In addition to the Buffer required by the underlying zoning district, all outdoor motorized recreation facilities shall be surrounded an additional minimum twenty five-foot buffer consisting of natural and undisturbed vegetation, supplemented as needed with a density and quality of plantings equal to five rows of evergreen plantings seven feet high and five feet on center.

(4) Exterior lighting shall be designed to minimize light pollution impacts to surrounding residential properties to the maximum extent possible, and in accordance with Town Code Exterior Lighting Standards.

(5) The applicant shall provide a noise mitigation plan for all outdoor motorized recreation facilities, demonstrating appropriate protections to all adjacent residentially zoned or used properties and demonstrating compliance with Chapter 50 of the Brookhaven Town Code.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(6) The applicant shall provide a plan to mitigate the generation of fugitive dust for all outdoor motorized recreation facilities demonstrating appropriate protections to all adjacent properties as deemed appropriate by the Planning Board.

B. Outdoor recreation.

(1) Exterior lighting shall be designed so as to minimize light pollution impacts to surrounding residential properties to the maximum extent possible and in accordance with Town Code Exterior Lighting Standards.

(2) The applicant shall provide a noise mitigation plan to protect any surrounding residential properties from noise impacts in compliance with Chapter 50 of Town Code.

C. Outside seating as an accessory use to a major restaurant use.

(1) Outside seating shall be permitted for food service purposes only.

(2) Between the hours of 11:00 p.m. and 8:00 a.m., loudspeakers, exterior live entertainment or dancing of any kind shall be prohibited.

(3) Within 1,000 feet of any residential use or zone, outdoor loudspeakers, exterior live entertainment or dancing of any kind shall be prohibited.

(4) Within 250 feet of any residence, outdoor seating shall be prohibited.

(5) Outside seating shall be permitted on the subject parcel only.

Section 50. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-540 entitled "Permitted accessory uses" is hereby amended as follows:

§ 85-540. Permitted accessory uses.

The following accessory uses shall be permitted only as clearly incidental to a permitted principal use:

A. Customary accessory uses, structures and buildings shall be permitted when located on the same lot as the principal authorized use, provided that such uses are clearly incidental to the principal use and do not include any activity conducted as a business.

B. Art gallery.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

C. Barge service.

D. Boat rentals, including canoes, kayaks and other watercraft.

E. Boat repair.

F. Boat sales, including canoes, kayaks and other watercraft and related equipment and accessories.

G. Commercial boat storage, including winter off-season outdoor storage of boats within designated off-street parking areas, and marina-related equipment and accessories, not including rack storage.

H. Commercial shipyard or boat repair yard.

I. Museum.

J. Non-degree-granting instruction/programs.

K. Office(s).

L. Rack storage.

M. Watchman quarters.

N. Retail sales.

O. Take-out restaurant.

P. Sea tow.

Q. Visitor center.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

R. Water taxi.

Section 51. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-541 entitled "Planning Board special permits for accessory uses" is hereby amended as follows:

§ 85-541. Planning Board special permits for accessory uses.

The following special permit accessory uses, when authorized by the Planning Board, shall be permitted only as clearly incidental to a permitted principal use and subject to the criteria as set forth in this chapter in addition to the criteria contained herein:

- A. Bar or tavern.
- B. Catering hall.
- C. Charter vessel fishing.
- D. Live performance/community theater.
- E. Marine motor-fuel-dispensing facility.
- F. Outdoor seating.
- H. Restaurant.

Section 52. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-544 entitled "Special permit criteria" is hereby amended as follows:

§ 85-544. Special permit criteria.

In addition to the special permit criteria set forth in this chapter, the following special permit criteria shall be required for the uses so indicated:

F. Outside seating as an accessory use to a major restaurant use.

(1) Outside seating shall be permitted for food service purposes only.

(2) Between the hours of 11:00 p.m. and 8:00 a.m., loudspeakers, exterior live entertainment or dancing of any kind shall be prohibited.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(3) Within 1,000 feet of any residential use or zone, outdoor loudspeakers, exterior live entertainment or dancing of any kind shall be prohibited.

(4) Within 250 feet of any residence, outdoor seating shall be prohibited.

(5) Outside seating shall be permitted on the subject parcel only.

Section 53. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-560 entitled "Permitted uses" is hereby amended as follows:

§ 85-560. Permitted uses.

In an L Industrial 1 District, no building, structure or premises shall be used or occupied and no building or part thereof shall be so erected or altered, except for one or more of the following purposes:

- A. Agricultural or nursery use, including the retail sale of products raised on the premises.
- B. Assembly and social recreation hall.
- C. Bank, with or without drive through.
- D. Commercial laundry establishment.
- E. Convent or monastery.
- F. Day-care facility.
- G. Health club.
- H. Lodge.
- I. Lumberyard.
- J. Manufacturing, only within a building.
- K. Motor vehicle rental.
- L. Nonmotorized recreational activities.
- M. Nursery/Garden center.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

N. Office.

O. Places of worship, parish house or rectory.

P. Printing plants.

Q. Research and development facility.

R. Stone and mason supply.

S. Veterinary hospital, provided that all activities take place within the building.

T. Warehouse.

U. All uses identified as incentive uses within the Transitional Area Overlay District established in connection with the Montauk Highway Corridor Study Land Use Plan for Mastic and Shirley Phase II.

V. Automobile parking field.

W. Bar, tavern or pub.

X. Indoor recreation.

Y. Kennels, provided that all activities are contained within the building.

Z. Public, private school or parochial school, with or without dormitory facilities.

AA. Retail sales, provided it is limited to only those goods that are generated by the principal use on the premises and does not occupy more than 5% of the total gross floor area of the building or more than 10,000 square feet, whichever is less.

BB. University or college.

Section 54. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-562 entitled "Accessory uses" is hereby amended as follows:

§ 85-562. Accessory uses.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

A. Customary accessory uses, structures and buildings shall be permitted when located on the same lot as the principal authorized use, provided that such uses are clearly incidental to the principal use and do not include any activity conducted as a business.

B. Outside seating for restaurant, take-out restaurant and delicatessen.

C. Solar energy production system as an accessory use shall be limited to one or more roof, wall, carport and/or ground-mounted solar collector devices and solar related equipment. For the purposes of this article, solar carports shall not be considered a structure as defined by the Town Code.

D. Repairs, servicing and vehicle wash as an accessory use to a commercial bus storage facility.

E. Fuel cell facility for on-site consumption.

F. Private parking garage as an accessory use to a permitted principal use.

G. Tasting room as an accessory to a permitted principal farm brewery, cidery, distillery, or winery use.

Section 55. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-563 entitled "Town Board special permits for accessory uses" is hereby amended as follows:

§ 85-563. (Reserved).

Section 56. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-564 entitled "Planning Board special permits" is hereby amended as follows:

Section 85-564. Board of Appeals special permits.

The following special permit uses, when authorized by the Board of Appeals, shall be subject to the criteria as set forth in **Article V, § 85-57(A)**, in addition to the criteria contained herein:

A. Nightclub or Dance Hall.

B. Commercial bus storage facility.

C. Heavy, construction vehicles and equipment dealership, subject to design standards contained herein.

D. Mini-storage warehouse.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

E. Motorized recreation.

F. Motor vehicle repair, with or without a depot as may be required by Chapter 66, Towing Businesses.

G. Non-degree-granting instruction/programs.

H. Outdoor recreation.

I. Outdoor storage.

J. Trucking terminal.

K. Fuel cell facility connected to the public electric grid in order to sell electricity to a public utility entity.

L. Cannabis retail sales establishment.

M. Cannabis indoor smoking establishment.

Section 57. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-565 entitled "Planning Board special permits for accessory uses" is hereby amended as follows:

§ 85-565. Board of Appeals special permits for accessory uses.

The following special permit accessory uses, when authorized by the Board of Appeals, shall be subject to the criteria as set forth in Article V, § 85-57(A), in addition to the criteria contained herein:

A. Fueling station as an accessory use to a commercial bus storage, trucking terminal, or warehouse.

B. Motor vehicle repair shop as an accessory use to a commercial bus storage, trucking terminal, or warehouse.

C. Outdoor or overnight parking of registered vehicles as an accessory use to a permitted principal use.

D. Outdoor storage as an accessory use to a permitted principal use.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

E. Restaurant, take-out restaurant and delicatessen as an accessory use to a permitted principal use.

F. Cannabis indoor smoking establishment as an accessory use to a cannabis retail sales establishment.

Section 58. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-569 entitled "Special permit criteria" is hereby amended as follows:

§ 85-569. Special permit criteria.

In addition to the criteria set forth within Article V, § 85-57(A), the following special permit criteria shall be required for the uses so indicated:

A. Adult uses, including adult entertainment establishments, adult bookstores, adult motels, adult theaters, massage establishments, and peep shows.

(1) The above uses are prohibited within a five-hundred-foot radius of any area zoned for residential use.

(2) The above uses are prohibited within a one-mile radius of another such use.

(3) The above uses are prohibited within 1,000 feet of the lot line of any premises used for a school, church or other place of religious worship, park, playground, or playing field, library, hospital or similar public or semi-public place of general congregation, or non-degree-granting instruction/programs, including self-defense, dance, swimming, gymnastics, and other sports.

(4) No more than one adult use shall be located on any lot.

B. Anaerobic digester facility.

(1) There shall be no anaerobic digester facility within an historic district or historic district transition area.

(2) There shall be no anaerobic digester facility within 150 feet of freshwater or tidal wetlands.

C. Bar, Tavern, or Pub

(1) The maximum gross floor area shall not exceed 4,999 square feet.

(2) No outdoor storage of kegs, crates or empty bottles/cans shall be permitted. A dumpster enclosure for one dumpster for rubbish, as well as one dumpster for cardboard recycling. The

(If additional space is needed, attach pages the same size as this sheet, and number each.)

dumpster enclosure shall consist of walls measuring eight feet in height, which complements the building façade.

(3) The above use shall be prohibited within 500 feet of the lot line of residentially zoned or used properties.

(4) A maintenance plan shall be provided for management of litter and general upkeep of the premises.

(5) Two designated loading stalls near the entrance.

D. Commercial bus storage facility.

(1) Loading bay doors shall be screened from visibility from adjoining residentially zoned or residentially developed properties and from public streets to the satisfaction of the Commissioner of Planning, Environment and Land Management.

(2) The minimum required vegetated perimeter buffer shall be 50 feet adjacent to any residential use or zone and along all street frontages.

(3) In addition, storage of vehicles shall be screened from the street by means of a berm, fence, and/or landscaping as deemed appropriate by the Planning Board of Appeals.

(4) Idling of vehicles shall be limited to five minutes.

E. Electric generating facilities.

(1) The maximum permitted stack height shall be 125 feet.

(2) The minimum required stack setback shall be 150% of the height of the stack from any lot line.

(3) The minimum required percentage of lot to remain natural and undisturbed shall be 30%.

(4) The minimum required vegetated perimeter buffer shall be 500 feet along all lot boundaries that abut residentially zoned property.

(5) Except as otherwise provided in Subsection **D(1)**, the maximum permitted structure height shall be 50 feet.

(6) Electric generating facilities shall demonstrate compliance with the exterior lighting standards in § **85-862** through **85-873**.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

F. Fueling station as an accessory use to a trucking terminal, commercial bus storage facility or warehouse.

(1) Fueling station shall be for private use only by vehicles owned and operated by the principal use.

(2) Fueling station shall be located on the same lot as the principal use and prohibited within 500 feet from any lot line bounding a residential zone or use, or an area of public assembly.

(3) All activities associated with the fueling, traffic circulation, queuing, and parking of vehicles shall take place on site.

G. Heavy construction vehicles and equipment dealership.

(1) All storage and display shall be located within the rear yard and shall be set back a minimum distance of 100 feet from any roadway.

(2) All outdoor storage shall be screened from view with fencing and/or landscaping in accordance with a site plan, which shall be subject to the review and approval of the Board of Appeals.

H. Mini-storage facility.

(1) Storage shall be limited to dead storage only. The storage of explosives, flammable, toxic or otherwise hazardous chemicals and/or other materials shall be prohibited.

(2) Architectural elevations shall be submitted for review and approval to the Commissioner of Planning, Environment and Land Management. Exterior signage and building siding material shall be of flat finishes only; bright, vivid and/or reflective colors shall be prohibited. Walls exceeding one story in height, which are visible from off site, shall be architecturally enhanced with pilasters, corbelled cornices, or similar ornamentation to the satisfaction of the Commissioner of Planning, Environment and Land Management.

(3) Storage unit doors shall be screened from visibility from adjoining residentially zoned or residentially developed properties and from public streets to the satisfaction of the Commissioner of Planning, Environment and Land Management.

(4) A minimum natural or landscaped area of 50 feet shall be maintained adjacent to all road frontages.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(5) All paved areas, including parking and parking aisle areas, shall be screened from view with landscaping or natural areas and/or decorative fencing to the satisfaction of the Commissioner of Planning, Environment and Land Management.

(6) Decorative walls or fencing shall be provided along all setback lines; decorative opaque walls and/or fencing shall be provided along all site property lines which are contiguous with residentially developed and/or zoned properties; other types of fencing may be permitted elsewhere on site subject to Board of Appeals review and approval.

(7) Parking stalls and loading areas adjacent to storage buildings may encroach on interior roadway 30 feet or wider, exclusive of required parking stalls, for office(s) or living quarters.

I. Motor vehicle repair.

(1) All repair work shall take place within the building. All repair work, excluding emergency service, shall be conducted only between the hours of 7:00 a.m. and 9:00 p.m.

(2) An area of sufficient size, as determined by the Board, shall be required for the outdoor, overnight parking of registered vehicles with the issuance of a special permit, subject to criteria specified herein. Said area shall be in addition to any depot required by Chapter 66, Towing Businesses.

(3) Overhead doors shall not face the street or any residentially zoned or used property.

J. Motorized Recreation.

(1) Minimum Lot size shall be 1 acre for any outdoor motorized recreation facility.

(2) All outdoor motorized recreation facilities shall be set back a minimum distance of 100 feet from all adjacent residentially zoned or used properties.

(3) In addition to the Buffer required by the underlying zoning district, all outdoor motorized recreation facilities shall be surrounded by minimum twenty five-foot buffer consisting of natural and undisturbed vegetation, supplemented as needed with a density and quality of plantings equal to five rows of evergreen plantings seven feet high and five feet on center.

(4) Exterior lighting shall be designed to minimize light pollution impacts to surrounding residential properties to the maximum extent possible, and in accordance with Town Code Exterior Lighting Standards.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(5) The applicant shall provide a noise mitigation plan for all outdoor motorized recreation facilities, demonstrating appropriate protections to all adjacent residentially zoned or used properties and demonstrating compliance with Chapter 50 of the Brookhaven Town Code.

(6) The applicant shall provide a plan to mitigate the generation of fugitive dust for all outdoor motorized recreation facilities demonstrating appropriate protections to all adjacent properties as deemed appropriate by the Planning Board.

K. Non-degree-granting instruction/programs, indoor recreation and outdoor recreation.

(1) The above uses are prohibited within 1,000 feet of the lot line of any adult use.

L. Nightclub or Dance Hall

(1) The minimum gross floor area GFA for any facility or location used for a Night Club or Dance Hall shall be 5,000 square feet.

(2) No outdoor storage of kegs, crates or empty bottles/cans shall be permitted. A dumpster enclosure for one dumpster for rubbish, as well as one dumpster for cardboard recycling. The dumpster enclosure shall consist of walls measuring eight feet in height, which complements the building façade.

(3) The above use shall be prohibited within 500 feet of the lot line of residentially zoned or used properties.

(4) A maintenance plan shall be provided for management of litter and general upkeep of the premises.

(5) Two designated loading stalls located near the entrance.

M. Outdoor or overnight parking as an accessory use to a permitted principal use.

(1) Outdoor or overnight parking of registered vehicles shall be set back a minimum distance of 50 feet from any roadway.

(2) All outdoor or overnight parking of registered vehicles shall be screened from view with fencing and landscaping in accordance with a site plan, which shall be subject to the review and approval of the Board of Appeals.

(3) There shall be no outdoor or overnight parking of registered vehicles within the primary or secondary front yard.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

N. Outdoor recreation.

- (1) All outdoor recreation facilities shall be set back a minimum distance of 50 feet from all adjacent residentially zoned or used properties.
- (2) A minimum fifty-foot buffer consisting of natural and undisturbed vegetation, supplemented as needed with a density and quality of plantings equal to five rows of evergreen plantings seven feet high and five feet on center, shall be provided from all outdoor recreation facilities to all adjacent residentially zoned or used properties.
- (3) Exterior lighting shall be designed to minimize light pollution impacts to surrounding residential properties to the maximum extent possible, and in accordance with Town Code Exterior Lighting Standards.
- (4) The applicant shall provide a noise mitigation plan demonstrating appropriate protections to all adjacent residentially zoned or used properties and demonstrating compliance with Chapter 50 of the Brookhaven Town Code.

O. Outdoor storage.

- (1) The minimum lot size shall be 80,000 square feet, except within a designated hydrogeologic sensitive zone, where it shall be 120,000 square feet.
- (2) Outdoor storage shall be limited to a specific list of materials, items or equipment to be stored, as determined by the Board of Appeals.
- (3) A minimum one-hundred-foot buffer shall be provided to all adjacent residentially zoned or use properties.
- (4) A minimum twenty-five-foot buffer shall be provided to any adjoining industrially zoned or use properties.
- (5) The combined total area of the principal buildings or structures, impervious areas, and the outdoor storage areas shall not exceed 65% of the lot area.
- (6) Maximum permitted height of outdoor storage shall be 15 feet. Posts with permitted storage height marked thereon shall be installed within the outdoor storage areas.
- (7) Outdoor storage of compost, manure, sand, concrete, aggregate, junk cars, auto parts, tires, chemicals, fertilizer and uses permitted exclusively in an L Industrial 2 Zone shall not be permitted.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

- (8) All outdoor storage shall comply with dimensional regulations of this article.
- (9) There shall be no outdoor storage permitted within 150 feet of freshwater or tidal wetlands.
- (10) There shall be no outdoor storage permitted within a designated historic or historic transition district.
- (11) All outdoor storage shall be screened from adjoining property lines and adjoining roadways with a double row of evergreen plantings seven feet high and five feet on center and a solid tongue-and-groove fence with no gaps between slats or higher quality barrier; specific species of plantings and fence materials shall be determined by the Board of Appeals.
- (12) The potential for generation of fugitive dust shall be mitigated as determined by the Board of Appeals.

P. Outdoor storage as an accessory use to a permitted principal use.

- (1) A minimum lot area of two acres shall be required for outdoor storage.
- (2) All outdoor storage shall be located within the rear yard only. Outdoor storage within the primary or secondary front yard shall be prohibited. No outdoor storage shall be visible from any street frontage.
- (3) All outdoor storage shall be screened from visibility from adjoining roadways with landscaping and/or decorative fencing in accordance with Town standards and require a site plan, which shall be subject to the review and approval of the Board of Appeals.
- (4) All outdoor storage shall be set back a minimum distance of 50 feet from any roadway and 25 feet from any side or rear property line.
- (5) Outdoor storage shall be limited to only those goods that are generated or manufactured by the principal use on the premises, and shall be located on the same lot as the principal use, and prohibited within 500 feet from any lot line bounding a residential use or zone.
- (6) Outdoor storage shall have all activities associated with the outdoor storage area, such as loading, delivery, pick up, traffic circulation, queuing, and parking, take place on site.
- (7) No outdoor storage shall be permitted above legal fence height.

Q. Restaurant, take-out restaurant and delicatessen as an accessory use to a permitted principal use.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(1) The restaurant, take-out restaurant or delicatessen use may occupy a maximum of 5% of the total gross floor area of the building and shall not exceed a maximum of 3,000 square feet gross floor area.

(2) The restaurant, take-out restaurant or delicatessen use shall be located within the building of the permitted principal use.

(3) A maximum of one accessory restaurant, delicatessen or take-out restaurant use shall be permitted per site.

(4) Freestanding restaurants, or take-out restaurants or delicatessen uses shall be prohibited.

R. Fuel cell facility connected to the public electric grid in order to sell electricity to a public utility entity.

(1) The maximum permitted height for all structures and appurtenant equipment shall be 50 feet.

(2) A fuel cell facility shall provide a "proof of concept letter" from the local electric corporation acknowledging that the fuel cell facility will be interconnected to the utility grid to sell electricity to the electric corporation.

(3) All applications for a fuel cell facility shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the facility. Prior to issuance of a building permit, the owner or operator of the facility shall post a performance bond or other suitable guarantee in a face amount of not less than 150% of the estimated cost, as determined by the Town Engineer, to ensure removal of the facility. The form of the guarantee must be reviewed and approved by the Town Engineer and Town Attorney, and the guarantee must remain in effect until the system is removed. Review of the guarantee by the Town Engineer and Town Attorney shall be paid from an escrow established by the applicant. Prior to removal of a facility, a demolition permit for removal activities shall be obtained from the Town of Brookhaven.

S. Cannabis retail sales establishments and cannabis indoor smoking establishment.

(1) The above uses are prohibited within a five-hundred-foot radius of any residential use or zone.

(2) The above uses are prohibited within a one-mile radius of another such use.

(3) The above uses are prohibited within 1,000 feet of the lot line of any premises used for a school, church or other place of religious worship, park, playground, or playing field, library,

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hospital or similar public or semi-public place of general congregation, or non-degree-granting instruction/programs, including self-defense, dance, swimming, gymnastics, and other sports.

(4) No more than one cannabis retail sales establishment and one cannabis indoor smoking establishment may be located on any lot.

(5) For a cannabis indoor smoking establishment, proof of adequate ventilation and air filter system must be provided.

T. Trucking Terminal

(1) Shall only be permitted within 1,000 feet from the following enumerated major roadways as determined by the Town Board:

(a) New York State Route 25A.

(b) New York State Route 347.

(c) County Road 16.

(d) County Road 46.

(e) County Road 51.

(f) County Road 97.

(g) County Road 101.

(h) Long Island Expressway/Interstate 495 Service Roads.

(i) New York State Route 27 Service Roads.

(2) All aisles within parking areas designated for passenger cars that are 90° to the aisle shall have a minimum width of 24 feet.

(3) All aisles within parking areas designated for Trucks that are 90° to the aisle shall have a minimum width of 40 feet.

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- (4) No ingress or egress onto secondary or tertiary roads.
- (5) Buffers and plantings in accordance with the land development standards.
- (6) The minimum lot area shall be 200,000 square feet.
- (7) A minimum six-foot-high solid (opaque) fence shall be provided along the property line of all adjacent residentially zoned or used properties.
- (8) A minimum natural or landscaped buffer area as required by the land development standards.

Section 59. Text Amendment. Chapter 85 entitled “Zoning”; Section 85-813 entitled “Solar energy production facilities” is hereby amended as follows:

§ 85-813. Solar energy production facilities.

A. Permitted locations.

(1) A solar energy production facility may be permitted as a principal use or accessory use in any L Industrial 1, L Industrial 2, J Business 2, J Business 5 and J Business 4 District when authorized by special permit from the Board of Appeals subject to the requirements of § **85-813B** and § **85-57** of this chapter. Nothing herein shall supersede or limit any other code section contained within this chapter that may pertain to solar energy production facilities. No solar energy production facility shall be located in the areas listed in Subsection **A(2)** below unless a special permit is granted by the Town Board. Said uses shall be subject to the criteria as set forth in Article **VI**, § **85-68**.

(2) Areas of potential sensitivity:

- (a) One-hundred-year flood hazard zones considered a V or AE Zone on the FEMA Flood Maps.
- (b) Historic and/or culturally significant resources, in an historic district, or historic district transition zone.
- (c) Within 100 feet landward of a tidal or freshwater wetlands.
- (d) Adjacent to, or within, the control zone of any airport, subject to approval by the Federal Aviation Administration.

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(e) Within the Manorville Farm Protection Area or Eastport Farm Protection Area.

B. Special permit criteria. A solar energy production facility as a principal use shall comply with all the special permit requirements herein, including but not limited to the following:

(1) Minimum lot area. The minimum lot area for a solar energy production facility shall be five acres.

(2) Height restrictions. The maximum height for freestanding solar panels located on the ground or attached to a framework located on the ground shall not exceed 20 feet in height above the ground.

(3) Buffer and setback restrictions.

(a) A minimum twenty-five-foot perimeter buffer, consisting of natural and undisturbed vegetation, supplemented with evergreen plantings in accordance with Town standards, as needed, shall be provided around all mechanical equipment and solar panel arrays to provide screening from adjacent residential properties and Town, county and state roads.

(b) A minimum setback for a solar energy production facility and equipment used in conjunction with the solar energy production facility shall be located at least 100 feet from any residential dwelling or zone.

(4) Design standards.

(a) Solar energy production facilities shall be permitted only on those lands previously cleared and/or disturbed on or before January 1, 2016. No additional clearing shall be permitted except as provided in Subsection **B(4)(b)** below.

(b) The removal of shrubs, underbrush and trees under three inches in diameter shall be permitted and shall not be deemed clearing.

(c) To reduce erosion, runoff of stormwater, and to provide suitable habitat to native reptiles, amphibians, small mammals, birds, and insects, including those that play an important role in pollination, ground cover under, between, and adjacent to the rows of solar panels shall be required and shall consist of low-maintenance, native, non-fertilizer-dependent grasses and wildflowers.

(d) Roadways within the site shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction.

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(e) All on-site utility and transmission lines shall, to the extent feasible, be placed underground.

(f) All solar energy production facilities shall be designed and located in order to prevent reflective glare toward any inhabited buildings on adjacent properties as well as adjacent street rights-of-way.

(g) All mechanical equipment of a principal solar energy production facility, including any structure for batteries or storage cells, shall be completely enclosed by a minimum eight-foot-high anchored mini-mesh chain-link fence with two-foot tip out and a self-locking gate. Said fence shall contain five-inch-high by sixteen-inch-wide grade-level cutouts every 75 feet to permit small animals to move freely into and out of the site. Landscape screening shall be provided in accordance with the landscaping provisions of this chapter.

(h) A solar energy production facility connected to the utility grid shall provide a "proof of concept letter" from the local utility company acknowledging the solar energy production facility will be interconnected to the utility grid in order to sell electricity to the public utility entity.

(i) All debris and materials generated by site construction shall be removed from the site.

(j) All lighting shall conform to the Town's exterior lighting standards.

(k) Fire access roads and access for fire apparatus equipment shall be provided, as approved by the Town Fire Marshal.

(l) All stormwater and drainage shall be contained on site in accordance with the Town's Green Landscaping and Design Standards.

(m) Soil or material removal shall be in accordance with Town Code Chapter 53, Sand and Gravel Pits; Excavation; Removal of Topsoil.

(n) Grading shall be in accordance with Town Code Chapter 35, Grading.

(5) Signs. A sign not to exceed 2.25 square feet shall be attached to a fence adjacent to the main access gate and shall list the facility name, owner and phone number. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.

C. Solar energy collection systems. A solar collection system may be permitted as an accessory use in all commercial, J Business, J Business 2, J Business 4, J Business 5, J Business 6, L Industrial 1, L Industrial 2, MF, PRC, PRCHC and NH-H Districts. All applications shall be

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subject to § 85-113M and shall comply with all the requirements. The following may be permitted:

(1) One or more roof-, wall- and/or ground-mounted solar collector devices and solar-related equipment.

(2) Solar carports over existing and proposed parking facilities. For the purposes of this section, solar carports shall not be considered a structure as defined by the Town Code.

D. Incentives. The Board of Appeals is authorized to grant the following incentives, provided that the applicant can demonstrate compliance with the following:

(1) FAR incentive. Solar collection systems as an accessory use in commercial and industrial zones may increase the maximum permitted FAR by 20% by the Board of Appeals. The applicant shall demonstrate that the increase in welfare, comfort, convenience or order of the use of the property, adjacent properties or the Town will not be adversely affected.

(2) Required parking reduction incentive. Solar collection system as an accessory use in commercial and industrial zones may reduce minimum required off- and on-street parking requirements by a maximum of 20%, provided that the applicant can demonstrate that adequate and safe parking will still be provided and that the site is a minimum of three acres.

E. Abandonment. All applications for a solar energy production facility shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the solar energy production facility or structure. Prior to issuance of a building permit, the owner or operator of the facility or structure shall post a performance bond or other suitable guarantee in a face amount of not less than 150% of the estimated cost to ensure removal of the facility or structure in accordance with the decommissioning plan described below. The form of the guarantee must be reviewed and approved by the Town Attorney, and the guarantee must remain in effect until the system is removed. Prior to removal of a solar energy production facility or structure, a demolition permit for removal activities shall be obtained from the Town of Brookhaven.

(1) If the applicant ceases operation of the solar energy production facility or structure for a period of 12 months, or begins but does not complete construction of the project within 12 months after receiving final site plan approval, the applicant will submit a decommissioning plan that ensures that the site will be restored to a useful, nonhazardous condition without delay, including but not limited to the following:

(a) Removal of aboveground and belowground equipment, structures and foundations.

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- (b) Restoration of the surface grade and soil after removal of equipment.
- (c) Revegetation of restored soil areas with native seed mixes, excluding any invasive species.
- (d) The plan shall include a timeframe for the completion of site restoration work:

(2) In the event that construction of the solar energy production facility or structure has been started but is not completed and functioning within 18 months of the issuance of the final site plan, the Town may notify the operator and/or the owner to complete construction and installation of the facility within 180 days. If the owner and/or operator fails to perform, the Town may notify the owner and/or operator to implement the decommissioning plan. The decommissioning plan must be completed within 180 days of notification by the Town.

(3) Upon cessation of activity of a fully constructed solar energy production facility or structure for a period of one year, the Town may notify the owner and/or operator of the facility to implement the decommissioning plan. Within 180 days of notice being served, the owner and/or operator can either restore operation equal to 80% of approved capacity or implement the decommissioning plan.

(4) If the owner and/or operator fails to fully implement the decommissioning plan within the one-hundred-eighty-day time period and restore the site as required, the Town may, at its own expense, provide for the restoration of the site in accordance with the decommissioning plan and may, in accordance with the law, recover all expenses incurred for such activities from the defaulted owner and/or operator. The cost incurred by the Town shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officer and in the same manner as other taxes.

F. Conflicts. In the event a conflict exists between the provisions herein and any other section of this chapter, the provisions of this section prevail.

Section 60. Text Amendment. Chapter 85 entitled “Zoning”; Section 85-815 entitled “Permitted locations” is hereby amended as follows:

§ 85-815. Permitted locations.

A. A Tier 1 battery energy storage system may be permitted as a principal use in any J Business 2 and J Business 5 District when authorized by special permit from the Board of Appeals subject to the requirements of this chapter.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

B. A Tier 1 or Tier 2 battery energy storage system may be permitted as a principal use in any L Industrial 1, L Industrial 2, and L Industrial 4 District.

C. Special permit criteria. The following special permit criteria are applicable to battery energy storage systems located in J Business 2 and J Business 5:

- (1) The minimum lot area shall be 40,000 square feet.
- (2) The minimum required width of road frontage shall be 100 feet.
- (3) The minimum required front yard setback shall be 50 feet.
- (4) The minimum required side yard setback shall be 25 feet, except as otherwise provided herein.
- (5) The minimum required rear yard setback shall be 25 feet, except as otherwise provided herein.
- (6) The maximum permitted FAR shall be 35%.
- (7) The maximum permitted height for all structures shall be 35 feet.
- (8) The minimum side yard and/or rear yard setback shall be 50 feet when adjacent to property zoned or used for residential.
- (9) The minimum perimeter buffer area shall be 25 feet, consisting of natural and undisturbed vegetation, supplemented with evergreen plantings in accordance with Town standards.

D. Dimensional criteria. The following dimensional criteria are applicable to battery energy storage systems located in L Industrial 1, L Industrial 2, and L Industrial 4:

- (1) The minimum lot area shall be 40,000 square feet.
- (2) The minimum required width of road frontage shall be 100 feet.
- (3) The minimum required front yard setback shall be 50 feet.
- (4) The minimum required side yard setback shall be 10 feet; the minimum side yard setback shall be 25 feet when adjacent to property zoned or used for residential.
- (5) The minimum required rear yard setback shall be 50 feet.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(6) The maximum permitted FAR shall be 35%.

(7) The maximum permitted height for all structures shall be 50 feet.

Section 61. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-843 entitled "Land Development Standards" subsection(A)(6)(b) is hereby amended as follows:

§ 85-843. Land development standards.

A. Minimum natural area/landscaping requirements.

(6) Supplemental standards. The following supplementary standards shall be required for the uses so indicated:

(a) A minimum landscaped or natural area of 30% shall be maintained in connection with a commercial center, regional theater or industrial or office use occupying a site of five acres or more.

(b) A minimum landscaped or natural area of 35% shall be maintained in connection with a major-restaurant.

Section 62. Text Amendment. Chapter 85 entitled "Zoning"; Section 85-852 entitled "Table of Parking Requirements" is hereby amended as follows:

§ 85-852. Table of Parking Requirements.

The Table of Parking Requirements is as follows:

Principal Land Use	Parking Requirement	Additional Requirement
Agricultural, greenhouse	A minimum 5 stalls, or 1 per 60,000 sf of land or part thereof	See Note 1
Airport	1 per 200 sf of gfa for airport terminal 1 per private plane, 0.80 per passenger plane	Accessory uses: 1 per 400 sf of gfa

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Principal Land Use	Parking Requirement	Additional Requirement
Adult uses	1 per 150 sf of gfa	
Art galleries, artist studio, community center, exhibit hall, museum, nonprofit cultural center	1 per 300 sf of gfa	See Note 2
Assembly and social recreation hall	With fixed seats: 1 per 2 seats Without fixed seats: 1 per 100 sf of gfa	
Bank	1 per 150 sf of gfa	See Note 2
Bar, tavern, <u>or pub</u> <u>Nightclub or dance hall</u>	1 1/2 per 2 persons legally accommodated	See Note 2
Bed-and-breakfast	1 per guest room	2 additional spaces for proprietor residential unit
Billiard hall	1 per 150 sf of gfa	See Note 2
Bowling alley	4 per alley	
Casino, gaming center, off-track betting facility	2 per 150 sf of gfa	See Note 2
Commercial center, large commercial retail	1 per 175 sf of gfa	See Note 1
Convenience store	1 per 100 sf of gfa	See Note 2
Convent, monastery	1 per 10 residents, or 1 per 1,000 sf of gfa, whichever is less	
Day-care, adult day-care facility	1 per 400 sf of gfa	See Note 2

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Principal Land Use	Parking Requirement	Additional Requirement
Drive-through service queue	Bank: 6 per window Drive-in establishment: 6 per window, or 4 per window if more than 2 windows Major restaurant: 12 per window Motor vehicle wash: 20 for automatic, 5 for self-serve Pharmacy: 3 per window	
Dry cleaner	1 per 150 sf of gfa	See Note 2
Electric-generating facility	A minimum 10 stalls or as required by the Planning Board	
Farmers market	1 per 300 sf of gfa	See Note 1
Farm stand	1 per 200 sf or part thereof	See Note 1
Health club	1 per 150 sf of gfa	See Note 2
Home occupation	1 per 200 sf of gfa used for the occupation	
Hotel, motel, boardinghouse	1 per guest room or suite	
Hotel, convention/conference center	1 per guestroom or suite, plus 1 space per each 4 seats in the largest assembly hall or meeting area	
Hospital	2 per 3 patient beds	1 per staff member/employee on maximum shift
Kennel	1 per 300 sf of gfa	
Laundromat, mega laundromat	1 per 150 sf of gfa	See Note 2

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Principal Land Use	Parking Requirement	Additional Requirement
Live performance community theater	1 per 3 seats	See Note 2
Lodge	With fixed seats: 1 per 2 seats Without fixed seats: 1 per 100 sf of gfa	
Lumberyard	1 per 200 sf of gfa	See Note 1
Main Street Business District	1 per 150 sf of gfa Second/third story: residential: 1 per bedroom Office: 1 per 500 sf of gfa	See Notes 2 and 3
Manufacturing warehouse, research and development	1 per 400 sf of gfa Multi-tenant: 1 per 250 sf of gfa	See Note 1
Marinas	1 per 3 boat slips, boat rack or mooring station	
Mini-storage warehouse	1 per 2,000 sf of gfa	See Note 1
Mixed-use building	1 per 150 sf of gfa Second story: 1 per residential bedroom or 1 per 500 sf of gfa for nonresidential	See Note 2
Model dwelling	4 per first model dwelling unit and	2 additional spaces per each additional adjoining model dwelling unit
Motor vehicle dealership Heavy construction dealership	Showroom: 1 per 1,000 sf of gfa	1 per employee Service area: 1 per 300 sf of gfa
Motor vehicle fueling station	A minimum of 2 stalls	
Motor vehicle rental	1 per 400 sf of gfa	

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Principal Land Use	Parking Requirement	Additional Requirement
Motor vehicle repair	1 per 200 sf of gfa	Plus depot as directed by the Board
Motor vehicle wash	1 per 400 sf of gfa	Finishing area: 10 for automatic, 2 for self-serve
Movie theater, community	1 per 3 seats	See Note 2
Movie theater, regional	1 per 2 seats	
Non-degree-granting instruction programs	1 per 150 sf of gfa	See Note 2
Nursery/Garden center	A minimum 10 stalls, plus 1 per 10,000 sf of land or part thereof	1 per 150 for building area over 5,000 See Note 1
Office	1 per 150 sf of gfa	See Note 2
Outdoor display	None	See Note 1
Outdoor seating	1 per 4 seats for full waiter service seating 1 per 8 seats for no waiter service seating	See Note 1
Outdoor storage	1 per 20,000 sf of land or part thereof	See Note 1
Place of worship	1 per 3 persons in sanctuary areas	See Note 2
Personal service shop	1 per 150 sf of gfa	See Note 2
Pharmacy	1 per 150 sf of gfa	See Note 2
Printing plant	1 per 300 sf of gfa	
Public utility	1 per 300 sf of gfa	
Recreation/Amusement	Indoor: 1 per 150 sf of gfa or, with fixed seats; 1 per 2 seats Outdoor: 1 per 5,000 sf of land or, with fixed seats; 1 per 2 seats	See Note 2

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Principal Land Use	Parking Requirement	Additional Requirement
Residential	Single- and two-family dwelling: 2 per dwelling unit Multifamily dwelling: 2 per dwelling unit Planned retirement community: 1.5 per dwelling unit Assisted-living facility, congregate housing: 1 per dwelling unit Nursing home: 1 per 2 patient beds, plus 1 per 150 sf of office gfa Fraternities, sororities, dormitories: 1 per 2 beds	1 on-site off-street parking space per dwelling unit when an accessory apartment is permitted by § 85-258 Each parking space for all residential uses, other than single-family residential, must be accessible at all times and 5% of all parking stalls shall be equipped with an electric charging station; tandem parking arrangements are the equivalent of one parking space.
Restaurant; restaurant, major	Restaurant: 1 per 3 seats, or 1 per 150 sf of gfa, whichever is greater Major restaurant: 1 per 2 seats, or 1 per 100 sf of gfa, whichever is greater	See Note 2
Restaurant, take-out, delicatessen	1 per 150 sf of gfa	See Note 2
Retail, shops and stores	1 per 150 sf of gfa	See Note 2
Schools	Public, private school or parochial school with or without dormitory facilities: 1.5 per classroom College/University, excluding dormitories: 1 per 150 sf of gfa	Plus safe and convenient loading and unloading of students
Shops for custom work	1 per 150 sf of gfa	

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Principal Land Use	Parking Requirement	Additional Requirement
Stone and mason supply	A minimum 10 stalls, plus 1 per 20,000 sf of land or part thereof	See Note 1
Undertaking establishment	1 per 150 sf of gfa or 20 per viewing room, whichever is greater	See Note 2
Veterinary hospital	1 per 200 sf of gfa	See Note 2

NOTES:

- (1) The areas of any accessory outdoor sales area, outdoor storage area, or outdoor seating shall be included in minimum parking and loading space calculations.
- (2) Improved and designated on-street parking along the development street frontage or municipal parking within 200 feet of the site may be included in meeting the parking requirement at the discretion of the Planning Board.
- (3) The Planning Board may consider a fee in lieu of required parking which shall be utilized for improvements and/or maintenance of municipal parking facilities.

Section 63. Text Amendment. Chapter SR entitled "Subdivision Regulations"; Section SR-2 entitled "General provisions" is hereby amended as follows:

§ SR-2. General provisions.

The preliminary layout and the supporting documents for a proposed subdivision constitute the material to be officially submitted via delivery to the Department of Planning, Environment and Land Management. The layout shows the general design of the subdivision and its public improvements so that the Planning Board can indicate its approval or disapproval of the subdivision prior to the time that the final plat, including the design and detailing of the public improvements and utilities, is completed. Approval of the preliminary layout does not constitute an approval of the final plan, nor should it be considered a valid basis for the construction of site improvements or for other commitments which depend upon its design characteristics.

Section 64. Text Amendment. Chapter SR entitled "Subdivision Regulations"; Section SR-3 entitled "Procedure" is hereby amended as follows:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

§ SR-3. Procedure.

A. Before starting the engineering and surveying work, in preparation for making preliminary plans of a subdivision, it is recommended that the developer consult with the Department of Planning, Environment and Land Management. It is also advisable to obtain copies of the Zoning Code, Zoning Map, Building Code and Subdivision Regulations and Construction Specifications.

B. The submission of a preliminary layout shall consist of the following items:

(1) Three copies of the application for the subdivision of land, together with the filing fee.

(2) Six paper prints of the preliminary layout.

C. The subdivider shall file a complete submission for the preliminary hearing and the filing fee at the Department of Planning, Environment and Land Management.

D. Copies of proposed subdivision maps which have frontage on, access to or otherwise directly relate to any existing county road or drainage system or county road or drainage right-of-way proposed by the County Official Map shall be forwarded to the County Department of Public Works and the County Planning Commission, pursuant to § 239-k of the General Municipal Law.

E. The Planning Board shall take formal action at the public hearing, after the complete preliminary subdivision is made, allowing a reasonable length of time for review by the interested departments. Following the hearing, the subdivider will be notified of the Board's action either approving or disapproving the subdivision.


Section 65. Exemption. Land Use application having been approved prior to the effective date of these amendments shall comply with the Code(s) in effect at the time of said approval.

Section 66. Authority. The Town Board is vested with the authority to make these amendments pursuant to Town Law Sections 130, 261-b, 271, 274-a and 274-b and in conformance with Municipal Home Rule Law Sections 10 and 20. The Town Board hereby intends to supersede Town Law § 268 and any other statute or local law to the extent necessary.

Section 67. Effective date. This local law shall become effective immediately upon filing with the Secretary of State of the State of New York.

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Dated: February 22, 2024
Farmingville, New York



Kevin J. LaValle, Town Clerk
Town of Brookhaven

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